



**KANSAS**  

---

**ASSOCIATION OF**  

---

**COUNTIES**

**County Desk Book  
2023**



Dear County Official,

We would like to congratulate and welcome you to county government in Kansas! Though it has already been a significant journey, your true job now begins. We realize the responsibility, opportunity, and challenges that await you, which is why KAC has compiled this County Desk Book for your reference.

Not only will you have questions on how to operate local government, but you will also have to communicate these issues to your co-workers and constituents. As a leader in your community, the County Desk Book will help guide you through the powers and duties of the various county responsibilities. It also provides direction on running a proper meeting pursuant to the Kansas Open Meetings Act (KOMA) and gives tools to address employment matters. We hope this information is helpful throughout your tenure in county government.

The County Desk Book not only contains a wide array of information but is a great resource for both quick and detailed information. It is truly a tool for all county employees. Thank you to KAC General Counsel Jay Hall, KAC Law Clerk Haleigh Karl, and all the county officials and county counselors who contributed to this publication.

Again, we would like to welcome you to local government and look forward to working with you in the years ahead for the betterment of your county and the state as a whole.

Sincerely,

Aaron Mays  
KAC President  
Shawnee County Commissioner

## TABLE OF CONTENTS

<b><u>Calendar of Statutory Events</u></b> .....	1
<b><u>CHAPTER 1: INTRODUCTION TO COUNTY GOVERNMENT</u></b> .....	6
<b><u>Article 1: Preparation for County Service</u></b> .....	6
1.1.1 <u>Oath</u> .....	6
1.2.1 <u>Official Bond</u> .....	6
1.1.3 <u>Conflict of Interest</u> .....	6
1.1.4 <u>Incompatibility of Offices</u> .....	7
1.1.5 <u>Working for the County</u> .....	7
<b><u>Article 2: Introduction to County Government</u></b> .....	7
1.2.1 <u>County Defined</u> .....	7
1.2.2 <u>County Services</u> .....	8
1.2.3 <u>Organization of Board of County Commissioners</u> .....	8
1.2.4 <u>Organizational Meeting</u> .....	8
1.2.5 <u>Vacancy in Office of Commissioner</u> .....	9
<b><u>Article 3: Powers of the Board of County Commissioners</u></b> .....	9
1.3.1 <u>The Board of County Commissioners' Authority</u> .....	9
1.3.2 <u>Recurring Monthly Duties of the Commissioners</u> .....	11
<b><u>Article 4: County Commissioners, Miscellaneous</u></b> .....	12
1.4.1 <u>Travel Expenses</u> .....	12
1.4.2 <u>Working with the News Media</u> .....	12
<b><u>CHAPTER 2: QUALIFICATIONS OF CANDIDATES AND PERSONS</u></b> .....	15
<b><u>CHAPTER 3: TIPS FOR GOVERNING</u></b> .....	16
<b><u>CHAPTER 4: COUNTY HOME RULE</u></b> .....	23
<b><u>Article 1: Introduction to Home Rule</u></b> .....	23
4.1.1 <u>General</u> .....	23
4.1.2 <u>City v. County Home Rule</u> .....	23
<b><u>Article 2: Specific Home Rule Restrictions</u></b> .....	23
4.2.1 <u>General</u> .....	23
4.2.2 <u>Uniform Application</u> .....	25

<b><u>Article 3: Police Power</u></b>	26
<b><u>Article 4: Home Rule Taxation</u></b>	26
<b><u>CHAPTER 5: RESOLUTIONS: PROCEDURE AND FORM</u></b>	29
<b><u>Article 1: Introduction</u></b>	29
5.1.1 <u>General</u>	29
5.1.2 <u>Types of Resolutions</u>	29
5.1.3 <u>Ordinary Resolutions</u>	29
5.1.4 <u>Charter Resolutions</u>	30
5.1.5 <u>Administrative Resolutions</u>	30
<b><u>Article 2: Provisions Applicable to All Resolutions</u></b>	30
5.2.1 <u>County Business</u>	30
5.2.2 <u>Local Versus Statewide Concern</u>	31
5.2.3 <u>Contrary to, or in Conflict with, State Law</u>	31
5.2.4 <u>Constitutionality</u>	32
5.2.5 <u>Public Purpose</u>	32
5.2.6 <u>Summary</u>	32
<b><u>Article 3: Charter Resolutions</u></b>	33
5.3.1 <u>Introduction</u>	33
5.3.2 <u>Exemption</u>	33
5.3.3 <u>Substitute Provisions</u>	33
5.3.4 <u>Additional Provisions Not in Conflict with State Law</u>	34
5.3.5 <u>Repeal or Amendment of a Charter Resolution</u>	34
<b><u>Article 4: Ordinary Resolutions: Procedure and Form</u></b>	34
5.4.1 <u>Numbering</u>	34
5.4.2 <u>Subject and Title</u>	35
5.4.3 <u>Resolving Clause</u>	35
5.4.4 <u>Body</u>	35
5.4.5 <u>Penalty</u>	35
5.4.6 <u>Source of Authority</u>	35
5.4.7 <u>Vote</u>	35
5.4.8 <u>Effective Date</u>	36
<b><u>Article 5: Charter Resolutions: Procedure and Form</u></b>	36
5.5.1 <u>Vote</u>	36
5.5.2 <u>Referendum</u>	36

5.5.3	<a href="#"><u>Petition</u></a>	36
5.5.4	<a href="#"><u>Sufficiency of the Petition</u></a>	36
5.5.5	<a href="#"><u>Resolution Calling an Election</u></a>	37
5.5.6	<a href="#"><u>Referendum Not Mandatory</u></a>	37
5.5.7	<a href="#"><u>Election Not Mandatory</u></a>	37
5.5.8	<a href="#"><u>Petition Unnecessary for Referendum</u></a>	38
5.5.9	<a href="#"><u>Recording the Charter Resolution</u></a>	38
5.5.10	<a href="#"><u>Filing with the Secretary of State</u></a>	38
5.5.11	<a href="#"><u>Number</u></a>	38
5.5.12	<a href="#"><u>Title</u></a>	38
5.5.13	<a href="#"><u>Resolving Clause</u></a>	39
5.5.14	<a href="#"><u>Body</u></a>	39
5.5.15	<a href="#"><u>Effective Date</u></a>	39
5.5.16	<a href="#"><u>Publication</u></a>	39
 <b><a href="#"><u>Article 6: Administrative Resolutions</u></a></b>		40
5.6.1	<a href="#"><u>Corporate and Administrative Powers</u></a>	40
5.6.2	<a href="#"><u>Appropriate Uses for Administrative Resolutions</u></a>	40
5.6.3	<a href="#"><u>Form and Procedure</u></a>	40
 <b><a href="#"><u>CHAPTER 6: MEETINGS GENERALLY</u></a></b>		43
 <b><a href="#"><u>Article 1: Introduction</u></a></b>		43
6.1.1	<a href="#"><u>Governing Body Defined</u></a>	43
6.1.2	<a href="#"><u>Meeting Powers of the County Board</u></a>	43
6.1.3	<a href="#"><u>Notices and the Agenda</u></a>	45
6.1.4	<a href="#"><u>Hours of Meeting</u></a>	45
6.1.5	<a href="#"><u>Locations of Meetings</u></a>	45
6.1.6	<a href="#"><u>Board Sits with Open Doors</u></a>	45
6.1.7	<a href="#"><u>Frequency of Meetings</u></a>	45
6.1.8	<a href="#"><u>Duties of the Chairman of the Board</u></a>	46
6.1.9	<a href="#"><u>Staff Personnel at Meetings</u></a>	46
6.1.10	<a href="#"><u>Rules and Regulations</u></a>	47
6.1.11	<a href="#"><u>Public Comment</u></a>	47
6.1.12	<a href="#"><u>Agenda/Order of Business</u></a>	47
6.1.13	<a href="#"><u>Yearly and Monthly Calendars</u></a>	48
6.1.14	<a href="#"><u>Suggestions for Expediting Meetings</u></a>	48
6.1.15	<a href="#"><u>What the Minutes Should Show—a Record of the Business</u></a>	49
6.1.16	<a href="#"><u>Ten Ways to Increase the Effectiveness of Board Meetings</u></a>	50
 <b><a href="#"><u>CHAPTER 7: MEETING RULES OF ORDER</u></a></b>		53

7.1.1	<a href="#"><u>Introduction</u></a>	53
7.1.2	<a href="#"><u>Order of Business</u></a>	53
7.1.3	<a href="#"><u>Calling the Meeting to Order</u></a>	54
7.1.4	<a href="#"><u>Roll Call</u></a>	54
7.1.5	<a href="#"><u>Quorum Required</u></a>	54
7.1.6	<a href="#"><u>Agenda Approval</u></a>	54
7.1.7	<a href="#"><u>Approval of the Minutes</u></a>	54
7.1.8	<a href="#"><u>Public Comments</u></a>	55
7.1.9	<a href="#"><u>Consent Agenda</u></a>	55
7.1.10	<a href="#"><u>Unfinished Business</u></a>	56
7.1.11	<a href="#"><u>New Business</u></a>	56
7.1.12	<a href="#"><u>Commissioner Comments and Committee Reports</u></a>	56
7.1.13	<a href="#"><u>County Officers Report</u></a>	57
7.1.14	<a href="#"><u>Authorization of Expenditures</u></a>	57
7.1.15	<a href="#"><u>Consideration of Resolutions</u></a>	57
7.1.16	<a href="#"><u>Addressing the Chair</u></a>	58
7.1.17	<a href="#"><u>Maintaining Order</u></a>	58
7.1.18	<a href="#"><u>Dividing the Question</u></a>	58
7.1.19	<a href="#"><u>Informal Consideration</u></a>	58
7.1.20	<a href="#"><u>Moving Previous Questions, Calling the Question or Vote Immediately</u></a>	58
7.1.21	<a href="#"><u>Making Motions</u></a>	59
7.1.22	<a href="#"><u>Seconding Motions</u></a>	59
7.1.23	<a href="#"><u>Stating the Motion</u></a>	59
7.1.24	<a href="#"><u>Appeal from the Decision of the Chair</u></a>	59
7.1.25	<a href="#"><u>Questions or Remarks; Debatable and Non-Debatable Motions</u></a>	60
7.1.26	<a href="#"><u>Putting the Question</u></a>	61
7.1.27	<a href="#"><u>Stating the Result</u></a>	61
7.1.28	<a href="#"><u>Number of Affirmative Votes Required for Business</u></a>	62
7.1.29	<a href="#"><u>Abstentions</u></a>	62
7.1.30	<a href="#"><u>Conclusion</u></a>	63
<b><a href="#"><u>CHAPTER 8: KANSAS OPEN MEETINGS ACT (KOMA)</u></a></b>		<b>65</b>
<b><a href="#"><u>Article 1: Intent and Purpose of the KOMA</u></a></b>		<b>65</b>
<b><a href="#"><u>Article 2: Governmental Bodies Subject to KOMA</u></a></b>		<b>65</b>
8.2.1	<a href="#"><u>Two Requirements</u></a>	65
8.2.2	<a href="#"><u>Subordinate Groups</u></a>	66
8.2.3	<a href="#"><u>Non-Profit Corporations</u></a>	66
<b><a href="#"><u>Article 3: What is a “Meeting?”</u></a></b>		<b>67</b>

8.3.1	<a href="#"><u>Definition of a Meeting</u></a>	67
8.3.2	<a href="#"><u>Meeting is Defined as any Gathering or Assembly</u></a>	67
8.3.3	<a href="#"><u>A Majority of the Membership</u></a>	68
8.3.4	<a href="#"><u>Business is Discussed</u></a>	68
<b><a href="#"><u>Article 4: Notice of Meeting</u></a></b>		69
8.4.1	<a href="#"><u>Notice Requirement</u></a>	69
8.4.2	<a href="#"><u>Form of Request and Notice</u></a>	70
8.4.3	<a href="#"><u>Agendas</u></a>	70
<b><a href="#"><u>Article 5: Open Meetings and Executive Sessions</u></a></b>		71
8.5.1	<a href="#"><u>Open Meetings</u></a>	71
8.5.2	<a href="#"><u>Executive Sessions – Procedure</u></a>	72
8.5.3	<a href="#"><u>Executive Sessions – Subjects</u></a>	73
8.5.4	<a href="#"><u>Open v. Closed Meetings</u></a>	74
8.5.5	<a href="#"><u>Procedure for Recessing to Executive Session</u></a>	75
<b><a href="#"><u>Article 6: KOMA Enforcement</u></a></b>		77
8.6.1	<a href="#"><u>Civil Penalties</u></a>	77
8.6.2	<a href="#"><u>Enforcement Procedure</u></a>	77
8.6.3	<a href="#"><u>Email, Chat Rooms, and Open Meetings</u></a>	77
<b><a href="#"><u>CHAPTER 9: KANSAS OPEN RECORDS ACT (KORA)</u></a></b>		85
<b><a href="#"><u>Article 1: Scope and Purpose of KORA</u></a></b>		85
9.1.1	<a href="#"><u>Intent of the Law</u></a>	85
9.1.2	<a href="#"><u>Public Record Defined</u></a>	85
9.1.3	<a href="#"><u>Public Agency Defined</u></a>	86
9.1.4	<a href="#"><u>Certain Use of Records Prohibited</u></a>	86
<b><a href="#"><u>Article 2: Access, Copies, Procedures</u></a></b>		87
9.2.1	<a href="#"><u>Access to Records</u></a>	87
9.2.2	<a href="#"><u>Copies of Records and Fees</u></a>	88
9.2.3	<a href="#"><u>Open Records Requests and Procedures</u></a>	89
<b><a href="#"><u>Article 3: Exceptions</u></a></b>		90
9.3.1	<a href="#"><u>Records Closed by Law</u></a>	90
9.3.2	<a href="#"><u>Records an Agency has Discretion to Disclose</u></a>	90
9.3.3	<a href="#"><u>Combined Confidential and Public Information</u></a>	92
9.3.4	<a href="#"><u>Old Records and Retention</u></a>	93
9.3.5	<a href="#"><u>Information Resources</u></a>	94

<b><u>Article 4: Enforcement of the KORA</u></b>	94
9.4.1 <u>Reporting of Complaints</u>	94
9.4.2 <u>Enforcement</u>	94
<b><u>CHAPTER 10: COUNTY FINANCIAL STRUCTURE</u></b>	98
<b><u>Article 1: Budgeting</u></b>	98
10.1.1 <u>The Structure of County Budgets and the Kansas Budget Law</u>	98
10.1.2 <u>Annual Budget Process and Budget Calendar</u>	101
10.1.3 <u>Capital Budgeting</u>	103
10.1.4 <u>Budget Amendments</u>	103
10.1.5 <u>Budget Administration</u>	104
10.1.6 <u>Reserve and Special Funds</u>	104
10.1.7 <u>Federal and State Aid Budgeting</u>	105
10.1.8 <u>Conclusion</u>	106
<b><u>Article 2: The Cash Basis Law</u></b>	106
10.2.1 <u>Cash Basis Law</u>	106
10.2.2 <u>Cash Basis Exceptions</u>	106
10.2.3 <u>Information for the Board and Public</u>	107
10.2.4 <u>Void Contracts and Orders</u>	107
10.2.5 <u>Penalty</u>	107
10.2.6 <u>Conclusion</u>	107
<b><u>Article 3: Claims and Their Payment</u></b>	107
10.3.1 <u>Claims Procedures</u>	107
10.3.2 <u>Illegal Transfers</u>	108
10.3.3 <u>Law of Triviality – Claims</u>	108
10.3.4 <u>Demand for Settlements and Damages</u>	109
10.3.5 <u>Payroll Claims</u>	109
10.3.6 <u>Warrants, Warrant-Checks, Checks</u>	110
<b><u>CHAPTER 11: LOCALLY GENERATED COUNTY REVENUES</u></b>	111
<b><u>Article 1: The Property Tax</u></b>	111
11.1.1 <u>Introduction</u>	111
11.1.2 <u>The Ad Valorem Property Tax in Kansas</u>	111
11.1.3 <u>Property Exempt from Taxation</u>	112
11.1.4 <u>Determination of the Property Tax Bill</u>	112
11.1.5 <u>Date for Property Valuation for Tax Purposes</u>	113
11.1.6 <u>Determination of the Assessed Valuation</u>	113
11.1.7 <u>Appealing Property Valuations</u>	115



11.1.8	<a href="#"><u>Computation of the Tax Rate</u></a>	115
11.1.9	<a href="#"><u>Determination of the Property Tax Rate</u></a>	115
11.1.10	<a href="#"><u>Property Tax Levies</u></a>	116
11.1.11	<a href="#"><u>Due Date for Property Taxes</u></a>	116
11.1.12	<a href="#"><u>Distribution of Taxes</u></a>	116
11.1.13	<a href="#"><u>Conclusion</u></a>	116
<b>Article 2: Ad Valorem Property Tax Foreclosure</b>		<b>117</b>
11.2.1	<a href="#"><u>Levy Becomes a Lien on the Property</u></a>	117
11.2.2	<a href="#"><u>Initial Delinquent Tax Sale or the County “Bid In” Procedure</u></a>	117
11.2.3	<a href="#"><u>Redemption by the Property Owner</u></a>	117
11.2.4	<a href="#"><u>Foreclosure</u></a>	117
11.2.5	<a href="#"><u>Foreclosure Sale by Public Auction</u></a>	118
11.2.6	<a href="#"><u>Prohibited Bidders and Sales</u></a>	118
11.2.7	<a href="#"><u>Challenges After the Sale</u></a>	119
11.2.8	<a href="#"><u>Lack of Interest in a Parcel</u></a>	119
<b>Article 3: Non-Property Tax Revenue</b>		<b>119</b>
11.3.1	<a href="#"><u>Motor Vehicle and Recreational Vehicle Taxes</u></a>	119
11.3.2	<a href="#"><u>Local Option Gross Earnings (Intangibles) Tax</u></a>	119
11.3.3	<a href="#"><u>Resolutions to Levy the Intangibles Tax</u></a>	120
11.3.4	<a href="#"><u>Authorization and Receipt of Intangibles Tax Revenues</u></a>	120
11.3.5	<a href="#"><u>Transient Guest Tax</u></a>	121
11.3.6	<a href="#"><u>Emergency Telephone Tax</u></a>	121
11.3.7	<a href="#"><u>Mortgage Registration Fees</u></a>	121
11.3.8	<a href="#"><u>Countywide Sales Taxes</u></a>	122
	<a href="#"><u>Sample Resolution for Counties Levying Gross Earnings on Intangibles</u></a>	127
	<a href="#"><u>Sample Resolution for Counties Proposing a Countywide Sales Tax</u></a>	128
<b>CHAPTER 12: PROPERTY TAXATION</b>		<b>132</b>
12.1.1	<a href="#"><u>Introduction</u></a>	132
12.1.2	<a href="#"><u>The Legal Requirements</u></a>	132
12.1.3	<a href="#"><u>Frequently Asked Questions</u></a>	134
<b>CHAPTER 13: OTHER REVENUE SOURCES</b>		<b>136</b>
<b>Article 1: State Aid and Shared Taxes</b>		<b>136</b>
13.1.1	<a href="#"><u>Local Ad Valorem Tax Reduction Fund (LAVTRF)</u></a>	136
13.1.2	<a href="#"><u>County and City Revenue Sharing Fund (CCRSF)</u></a>	136
13.1.3	<a href="#"><u>Special City and County Highway Fund (SCCHF)</u></a>	136
13.1.4	<a href="#"><u>Alcoholic Liquor Tax</u></a>	136
13.1.5	<a href="#"><u>Severance Tax Payments</u></a>	137
13.1.6	<a href="#"><u>Conclusion</u></a>	137

<b><u>Article 2: Federal Grants in Aid</u></b>	138
13.2.1 <u>Federal and State Grants</u>	138
13.2.2 <u>Kansas Department of Transportation (KDOT) Programs for Counties</u>	138
13.2.3 <u>Federal Road Programs for Local Jurisdictions</u>	139
13.2.4 <u>Federal Public Transit Programs</u>	140
13.2.5 <u>Transportation Training and Technical Assistance</u>	141
13.2.6 <u>Community Development Block Grant (HUD) Funds</u>	141
13.2.7 <u>Additional Federal Grants of Interest</u>	142
13.2.8 <u>Kansas Department of Health and Environment (KDHE) Grants</u>	142
13.2.9 <u>Revolving Loan Fund Programs for Wastewater Treatment Facilities</u>	143
13.2.10 <u>Land and Water Conservation Grants</u>	143
13.2.11 <u>Other Information</u>	143
13.2.12 <u>Conclusion</u>	143
<b><u>Article 3: Tax Exemptions</u></b>	143
13.3.1 <u>Exemptions Generally</u>	143
13.3.2 <u>Sales Tax Exemptions</u>	144
13.3.3 <u>Ad Valorem Tax Exemptions</u>	144
13.3.4 <u>Exemption from Execution</u>	144
13.3.5 <u>Federal Tax Exemptions</u>	144
13.3.6 <u>Conclusion</u>	144
<b><u>CHAPTER 14: INVESTMENT OF COUNTY FUNDS</u></b>	147
<b><u>Article 1: Complying with the Public Deposit Law</u></b>	147
14.1.1 <u>Introduction</u>	147
14.1.2 <u>Active Funds</u>	147
14.1.3 <u>Designation of the Depository of Funds</u>	147
14.1.4 <u>Deposit Pledging and Collateral</u>	147
14.1.5 <u>Idle (Inactive) Funds</u>	148
14.1.6 <u>Special Funds</u>	148
<b><u>Article 2: Investment Options</u></b>	148
14.2.1 <u>Introduction</u>	148
14.2.2 <u>Temporary Notes or No-Fund Warrants</u>	148
14.2.3 <u>Treasury Bills or Notes</u>	149
14.2.4 <u>Certificates of Deposit (CD's) &amp; Time Deposit Open Accounts (TDOA's)</u>	149
14.2.5 <u>Repurchase Agreements</u>	150
14.2.6 <u>Municipal Investment Pool of Kansas (MIP)</u>	150
14.2.7 <u>Pooled Money Investment Board Instruments</u>	151
14.2.8 <u>Pooled Money Investment Choices</u>	151
14.2.9 <u>Opening a Pool Account</u>	152

14.2.10	<a href="#">Direct Investment</a>	152
14.2.11	<a href="#">With the Trust Department of Commercial Banks</a>	152
<b><a href="#">Article 3: Other Items to Consider</a></b>		152
14.3.1	<a href="#">Investment of Undistributed Taxes</a>	152
14.3.2	<a href="#">Investments; Cash Basis and Budget Law</a>	152
14.3.3	<a href="#">Township Funds</a>	153
<b><a href="#">CHAPTER 15: FINANCIAL PLANNING</a></b>		155
<b><a href="#">Article 1: Debt Financing</a></b>		155
15.1.1	<a href="#">Why Finance with Long-Term Debt?</a>	155
15.1.2	<a href="#">What is a Bond?</a>	155
15.1.3	<a href="#">General-Obligation Bonds and Revenue Bonds</a>	155
15.1.4	<a href="#">Refunding Bonds</a>	158
15.1.5	<a href="#">Public Sales</a>	159
15.1.6	<a href="#">Signing</a>	159
15.1.7	<a href="#">Registration</a>	159
15.1.8	<a href="#">Bonded Indebtedness Limitations</a>	159
15.1.9	<a href="#">Short-Term Financing; Temporary Notes</a>	160
15.1.10	<a href="#">Lease Obligations</a>	160
15.1.11	<a href="#">No-Fund Warrants</a>	161
15.1.12	<a href="#">Conclusion</a>	161
<b><a href="#">CHAPTER 16: COUNTY SERVICES</a></b>		163
<b><a href="#">Article 1: Roads and Bridges</a></b>		163
16.1.1	<a href="#">Roads and Bridges</a>	163
16.1.2	<a href="#">County Road Unit System</a>	163
16.1.3	<a href="#">General County Rural Highway System Act</a>	163
16.1.4	<a href="#">County Township Road System</a>	164
16.1.5	<a href="#">Classification of Roads, Bridges and Culverts</a>	164
16.1.6	<a href="#">Connecting Links in Cities</a>	165
16.1.7	<a href="#">Letting of Contracts</a>	165
16.1.8	<a href="#">Proceedings for Changes in Roads</a>	165
16.1.9	<a href="#">Renting/Hiring County Machinery and Equipment</a>	166
16.1.10	<a href="#">Policy Considerations</a>	166
<b><a href="#">Article 2: Refuse Collection and Disposal</a></b>		167
16.2.1	<a href="#">General</a>	167
16.2.2	<a href="#">Policy Considerations</a>	168

<b><u>Article 3: Traffic Controls</u></b>	168
16.3.1 <u>General</u>	168
16.3.2 <u>Policy Considerations</u>	168
<b><u>Article 4: Fire Protection</u></b>	169
16.4.1 <u>General</u>	169
16.4.2 <u>Intergovernmental Cooperation</u>	169
16.4.3 <u>No-Fund Warrants for Fire Equipment</u>	169
16.4.4 <u>Fireman’s Relief Association</u>	169
16.4.5 <u>Policy Considerations</u>	170
<b><u>Article 5: Parks and Recreation</u></b>	170
16.5.1 <u>General</u>	170
16.5.2 <u>Resolution and Regulation of Park Facilities</u>	170
16.5.3 <u>Park and Recreation Aids</u>	171
16.5.4 <u>Policy Considerations</u>	171
<b><u>Article 6: Law Enforcement</u></b>	171
16.6.1 <u>General</u>	171
16.6.2 <u>Primary Law Enforcement Responsibility</u>	172
16.6.3 <u>Training Requirements</u>	172
16.6.4 <u>Cereal Malt Beverages (Beer)</u>	172
16.6.5 <u>Alcoholic Liquors</u>	173
16.6.6 <u>Consolidated Law Enforcement</u>	173
16.6.7 <u>Policy Considerations</u>	173
<b><u>Article 7: Public Works</u></b>	174
16.7.1 <u>General</u>	174
16.7.2 <u>Administration</u>	174
16.7.3 <u>Service Agreements</u>	174
<b><u>Article 8: Emergency Management</u></b>	175
16.8.1 <u>General</u>	175
16.8.2 <u>County Requirements</u>	175
16.8.3 <u>Declaring an Emergency</u>	176
16.8.4 <u>Parties Aggrieved by Governor’s Executive Order</u>	177
16.8.5 <u>Secretary of Health’s Role and Limitations</u>	177
16.8.6 <u>County Orders Differing from Executive Orders</u>	177
16.8.7 <u>Parties Aggrieved by County Orders</u>	178
16.8.8 <u>Local Health Officers and Quarantine</u>	178
16.8.9 <u>Parties Aggrieved by Local Health Official Order</u>	179
16.8.10 <u>Local School District Determine Operations</u>	179

16.8.11	<a href="#"><u>Governing Body of Community and Technical Colleges Determine Operations</u></a>	179
16.8.12	<a href="#"><u>Kansas Emergency Planning and Community Right-To-Know Act</u></a>	180
16.8.13	<a href="#"><u>Other County Emergency Provisions</u></a>	180
<b><a href="#"><u>Article 9: Canvassing Elections</u></a></b>		181
16.9.1	<a href="#"><u>Introduction</u></a>	181
16.9.2	<a href="#"><u>Board of Canvassers</u></a>	181
16.9.3	<a href="#"><u>Duties</u></a>	181
16.9.4	<a href="#"><u>Recount</u></a>	182
16.9.5	<a href="#"><u>Tie Vote</u></a>	182
16.9.6	<a href="#"><u>Certification of Abstract</u></a>	182
<b><a href="#"><u>Article 10: District Court</u></a></b>		183
16.10.1	<a href="#"><u>General</u></a>	183
16.10.2	<a href="#"><u>Preparation and Approval of Budget</u></a>	183
16.10.3	<a href="#"><u>Control of Expenditures</u></a>	183
16.10.4	<a href="#"><u>Audit</u></a>	183
<b><a href="#"><u>Article 11: Other Functions</u></a></b>		183
16.11.1	<a href="#"><u>Ambulance Services</u></a>	183
16.11.2	<a href="#"><u>Airports</u></a>	184
16.11.3	<a href="#"><u>Hospitals</u></a>	184
16.11.4	<a href="#"><u>Mental Health</u></a>	185
16.11.5	<a href="#"><u>Homes for the Aged</u></a>	186
16.11.6	<a href="#"><u>Public Health</u></a>	186
16.11.7	<a href="#"><u>Libraries</u></a>	186
16.11.8	<a href="#"><u>Weed Control</u></a>	187
16.11.9	<a href="#"><u>Fence Viewing</u></a>	187
16.11.10	<a href="#"><u>Dissolving, Consolidation, or Reorganizing a Township</u></a>	187
16.11.11	<a href="#"><u>Other Services</u></a>	189
<b><a href="#"><u>CHAPTER 17: INTERGOVERNMENTAL COOPERATION</u></a></b>		193
<b><a href="#"><u>Article 1: Introduction</u></a></b>		193
<b><a href="#"><u>Article 2: Interlocal Cooperation Act</u></a></b>		193
17.2.1	<a href="#"><u>Interlocal Cooperation Act</u></a>	193
17.2.2	<a href="#"><u>Contents of the Agreement</u></a>	194
17.2.3	<a href="#"><u>Approval by the Attorney General</u></a>	194
17.2.4	<a href="#"><u>Filing</u></a>	194

<b><u>Article 3: Interlocal Service Statutes</u></b> .....	195
<b><u>Article 4: Functional Consolidation Statute</u></b> .....	195
<b><u>Article 5: Specific Cooperation Statutes</u></b> .....	196
17.5.1 <u>Introduction</u> .....	196
17.5.2 <u>Specific Cooperation Statutes</u> .....	196
<b><u>Article 6: General Highway and Public Works Cooperative Efforts</u></b> .....	205
<b><u>Article 7: A Few Practice Pointers about Interlocal Agreements</u></b> .....	205
17.7.1 <u>Introduction</u> .....	205
17.7.2 <u>Two Types of Agreements</u> .....	206
<b><u>CHAPTER 18: PURCHASE AND SALE OF PROPERTY</u></b> .....	210
<b><u>Article 1: Purchasing</u></b> .....	210
18.1.1 <u>Purchasing Generally</u> .....	210
18.1.2 <u>Purchasing by Bids</u> .....	210
18.1.3 <u>Requisitions</u> .....	210
18.1.4 <u>Purchase Orders</u> .....	210
18.1.5 <u>Purchase Cards</u> .....	211
18.1.6 <u>Recommended Practices</u> .....	211
<b><u>Article 2: Establishing Written Purchasing Policies and Practices</u></b> .....	211
18.2.1 <u>Introduction</u> .....	211
18.2.2 <u>Purpose</u> .....	212
18.2.3 <u>The Public Purchasing Function</u> .....	212
18.2.4 <u>Types of Procurement Practices</u> .....	212
18.2.5 <u>Competitive Sealed Bidding</u> .....	213
18.2.6 <u>Elements of Competitive Bidding</u> .....	213
18.2.7 <u>Specifications</u> .....	213
18.2.8 <u>Public Notice</u> .....	214
18.2.9 <u>Submission of Bids</u> .....	214
18.2.10 <u>Public Openings</u> .....	214
18.2.11 <u>Modification or Withdrawal of Bids</u> .....	214
18.2.12 <u>Mistakes in Bids</u> .....	214
18.2.13 <u>Award</u> .....	215
18.2.14 <u>Lowest Responsible Bidder Defined</u> .....	215
18.2.15 <u>Right to Reject Any or All Bids</u> .....	215
18.2.16 <u>Competitive Sealed Proposals</u> .....	215

18.2.17	<a href="#"><u>Request for Proposals (RFPs)</u></a>	216
18.2.18	<a href="#"><u>Competitive Quotations</u></a>	216
18.2.19	<a href="#"><u>Considering a Purchasing Policy</u></a>	217
18.2.20	<a href="#"><u>Purpose of a Formal Purchasing Policy</u></a>	217
18.2.21	<a href="#"><u>A Policy Document</u></a>	217
18.2.22	<a href="#"><u>Methods of Procurement</u></a>	218
18.2.23	<a href="#"><u>Elements of a Purchasing Policy</u></a>	218
18.2.24	<a href="#"><u>Benefits of a Purchasing Policy</u></a>	218
18.2.25	<a href="#"><u>Conclusion</u></a>	219
<b><a href="#"><u>Article 3: Bid Procedures for Construction and Public Improvements</u></a></b>		219
18.3.1	<a href="#"><u>Bid Procedure</u></a>	219
18.3.2	<a href="#"><u>County Building and Bridges</u></a>	219
18.3.3	<a href="#"><u>County Road Work</u></a>	220
18.3.4	<a href="#"><u>Contracting not Required</u></a>	220
18.3.5	<a href="#"><u>When Contracts are Let for County Road Work</u></a>	220
18.3.6	<a href="#"><u>County Responsibilities</u></a>	221
18.3.7	<a href="#"><u>County Bid Requirements Suspended for Disasters</u></a>	221
18.3.8	<a href="#"><u>Modifying Bid Contracts</u></a>	221
18.3.9	<a href="#"><u>Bidding Practices</u></a>	221
18.3.10	<a href="#"><u>Public Building Commission</u></a>	222
<b><a href="#"><u>Article 4: Selling County Property</u></a></b>		222
18.4.1	<a href="#"><u>Introduction</u></a>	222
18.4.2	<a href="#"><u>Disposal of County Property</u></a>	222
18.4.3	<a href="#"><u>Trade-In Procedure to Dispose of County Property</u></a>	222
18.4.4	<a href="#"><u>County Hospital Property</u></a>	222
<b><a href="#"><u>CHAPTER 19: LAND USE AND ECONOMIC DEVELOPMENT</u></a></b>		226
<b><a href="#"><u>Article 1: Planning and Zoning</u></a></b>		226
19.1.1	<a href="#"><u>Introduction</u></a>	226
19.1.2	<a href="#"><u>Purpose</u></a>	226
19.1.3	<a href="#"><u>Planning Board</u></a>	226
19.1.4	<a href="#"><u>Comprehensive Planning</u></a>	226
19.1.5	<a href="#"><u>Zoning</u></a>	227
19.1.6	<a href="#"><u>Board of Zoning Appeals</u></a>	228
19.1.7	<a href="#"><u>Zoning Within Three Miles of Cities</u></a>	228
19.1.8	<a href="#"><u>Joint Boards</u></a>	228
<b><a href="#"><u>Article 2: Annexation</u></a></b>		228
19.2.1	<a href="#"><u>Annexation Authority and Public Policy</u></a>	228
19.2.2	<a href="#"><u>County Involvement with City Annexation</u></a>	229

19.2.3	<a href="#"><u>City Unilateral Annexations</u></a>	229
19.2.4	<a href="#"><u>Bilateral Annexations</u></a>	229
19.2.5	<a href="#"><u>“Island” Annexations</u></a>	231
19.2.6	<a href="#"><u>County Board Hearings on Service Extension Plans</u></a>	231
19.2.7	<a href="#"><u>De-annexation</u></a>	231
19.2.8	<a href="#"><u>Planning Commission Review of Annexations</u></a>	231
<b><a href="#"><u>Article 3: Subdivision Regulations</u></a></b>		232
19.3.1	<a href="#"><u>Nature of Subdivision Regulations</u></a>	232
19.3.2	<a href="#"><u>Purpose of Subdivision Regulations</u></a>	232
19.3.3	<a href="#"><u>Legal Authority for County Subdivision Regulations</u></a>	232
19.3.4	<a href="#"><u>Procedure</u></a>	232
<b><a href="#"><u>Article 4: Regulatory Codes</u></a></b>		233
19.4.1	<a href="#"><u>Adoption of Codes</u></a>	233
<b><a href="#"><u>Article 5: Special Purpose Districts</u></a></b>		233
19.5.1	<a href="#"><u>Creation of Special Units</u></a>	233
19.5.2	<a href="#"><u>Impact of Operation of Special Units</u></a>	234
<b><a href="#"><u>Article 6: Economic Development</u></a></b>		234
19.6.1	<a href="#"><u>Economic Development</u></a>	234
19.6.2	<a href="#"><u>Economic Development Tax Exemptions</u></a>	235
19.6.3	<a href="#"><u>Neighborhood Revitalization</u></a>	235
19.6.4	<a href="#"><u>Enterprise Zones</u></a>	235
<b><a href="#"><u>CHAPTER 20: COUNTY OFFICES AND OFFICIALS</u></a></b>		238
<b><a href="#"><u>Article 1: Introduction</u></a></b>		238
20.1.1	<a href="#"><u>County Office Defined</u></a>	238
20.1.2	<a href="#"><u>County Officer Defined</u></a>	238
<b><a href="#"><u>Article 2: Authority of the Board of County Commissioners</u></a></b>		238
20.2.1	<a href="#"><u>Authority Over Personnel</u></a>	238
20.2.2	<a href="#"><u>County Personnel Policies</u></a>	240
20.2.3	<a href="#"><u>Salaries of County Officers and Employees</u></a>	240
20.2.4	<a href="#"><u>County Expenditures</u></a>	241
<b><a href="#"><u>Article 3: County Offices and Officers</u></a></b>		241
20.3.1	<a href="#"><u>General</u></a>	241
20.3.2	<a href="#"><u>County Clerk</u></a>	241
20.3.3	<a href="#"><u>Deputy County Clerks</u></a>	242



20.3.4	<a href="#"><u>County Appraiser</u></a>	242
20.3.5	<a href="#"><u>Re-appointment/ Termination of the County Appraiser</u></a>	245
20.3.6	<a href="#"><u>County Treasurer</u></a>	245
20.3.7	<a href="#"><u>Deputy/ Assistant County Treasurer</u></a>	247
20.3.8	<a href="#"><u>Register of Deeds</u></a>	248
20.3.9	<a href="#"><u>Deputy/ Assistant Register of Deeds</u></a>	248
20.3.10	<a href="#"><u>County Attorney</u></a>	249
20.3.11	<a href="#"><u>Personnel Policies Applicable to the County Attorney</u></a>	249
20.3.12	<a href="#"><u>Assistant County Attorney</u></a>	250
20.3.13	<a href="#"><u>District Attorney</u></a>	250
20.3.14	<a href="#"><u>County Counselors</u></a>	250
20.3.15	<a href="#"><u>Clerk of the District Court</u></a>	251
20.3.16	<a href="#"><u>County Administrator</u></a>	251
20.3.17	<a href="#"><u>Other County Officers</u></a>	251
 <b><a href="#"><u>Article 4: The Authority of the County Sheriff</u></a></b>		252
20.4.1	<a href="#"><u>The Role of the County Sheriff</u></a>	252
20.4.2	<a href="#"><u>The Unique Role of the Undersheriff</u></a>	253
20.4.3	<a href="#"><u>Deputies</u></a>	254
20.4.4	<a href="#"><u>The Sheriff's Budget</u></a>	254
20.4.5	<a href="#"><u>Conclusion</u></a>	255
 <b><a href="#"><u>CHAPTER 21: PERSONNEL</u></a></b>		258
 <b><a href="#"><u>Article 1: Personnel Policy and Procedures</u></a></b>		258
21.1.1	<a href="#"><u>Personnel Overview</u></a>	258
21.1.2	<a href="#"><u>Officer and Employee Distinguished</u></a>	258
21.1.3	<a href="#"><u>Personnel Rules and Regulations</u></a>	258
21.1.4	<a href="#"><u>Employees of Publicly Elected Officials</u></a>	259
21.1.5	<a href="#"><u>Employee Organizations</u></a>	259
21.1.6	<a href="#"><u>Employee Oaths</u></a>	260
21.1.7	<a href="#"><u>Residency Requirements</u></a>	260
21.1.8	<a href="#"><u>Federal Officers and Employees</u></a>	260
21.1.9	<a href="#"><u>Interchange of Governmental Employees</u></a>	260
21.1.10	<a href="#"><u>Discharge of Employees</u></a>	260
21.1.11	<a href="#"><u>Veterans Preference</u></a>	261
 <b><a href="#"><u>Article 2: Personnel Salaries and Benefits</u></a></b>		263
21.2.1	<a href="#"><u>Salaries and Wages</u></a>	263
21.2.2	<a href="#"><u>Salary Reduction</u></a>	263
21.2.3	<a href="#"><u>State Minimum Wage and Maximum Hours</u></a>	263
21.2.4	<a href="#"><u>Fire and Law Enforcement Exemptions</u></a>	263
21.2.5	<a href="#"><u>Legal Holidays</u></a>	264

21.2.6	<a href="#"><u>Income Tax Withholding</u></a>	264
21.2.7	<a href="#"><u>Social Security</u></a>	264
21.2.8	<a href="#"><u>Workers' Compensation</u></a>	264
21.2.9	<a href="#"><u>Unemployment Compensation</u></a>	265
21.2.10	<a href="#"><u>Kansas Public Employees Retirement System (KPERS)</u></a>	265
21.2.11	<a href="#"><u>Deferred Compensation</u></a>	265
21.2.11	<a href="#"><u>Other Employee Benefits</u></a>	265
<b><a href="#"><u>Article 3: The Federal Fair Labor Standards Act (FLSA)</u></a></b>		265
21.3.1	<a href="#"><u>The Fundamentals</u></a>	265
21.3.2	<a href="#"><u>On-Call Time</u></a>	267
21.3.3	<a href="#"><u>Compensation for Mealtime</u></a>	267
<b><a href="#"><u>Article 4: State and Federal Laws Against Employment Discrimination</u></a></b>		268
21.4.1	<a href="#"><u>Discrimination in Hiring and Promotions</u></a>	268
21.4.2	<a href="#"><u>Equal Employment Opportunity Commission</u></a>	268
21.4.3	<a href="#"><u>Resolution and Enforcement Agencies</u></a>	268
21.4.4	<a href="#"><u>Employee Constitutional Rights</u></a>	268
21.4.5	<a href="#"><u>Section 1983 (Federal Civil Rights)</u></a>	269
21.4.6	<a href="#"><u>Kansas Act Against Discrimination</u></a>	269
21.4.7	<a href="#"><u>Affirmative Action</u></a>	269
21.4.8	<a href="#"><u>Americans with Disabilities Act</u></a>	270
21.4.9	<a href="#"><u>Age Discrimination in Employment Act (ADEA)</u></a>	270
21.4.10	<a href="#"><u>Kansas Age Discrimination in Employment Act</u></a>	270
21.4.11	<a href="#"><u>Height Restrictions</u></a>	271
21.4.12	<a href="#"><u>Immigration Reform and Control Act</u></a>	271
21.4.13	<a href="#"><u>Genetic Information Nondiscrimination Act</u></a>	271
<b><a href="#"><u>Article 5: The Family and Medical Leave Act</u></a></b>		272
21.5.1	<a href="#"><u>An Overview of the Act</u></a>	272
21.5.2	<a href="#"><u>Counties Covered by FMLA</u></a>	272
21.5.3	<a href="#"><u>Family and Medical Needs Covered by the Act</u></a>	272
21.5.4	<a href="#"><u>Eligible Employees</u></a>	273
21.5.5	<a href="#"><u>Qualifying Exigency for Military</u></a>	273
21.5.6	<a href="#"><u>Maintenance of Health Benefits</u></a>	274
21.5.7	<a href="#"><u>Job Restoration, Evaluation</u></a>	274
21.5.8	<a href="#"><u>Employees Notice and Certification Requirements</u></a>	274
21.5.9	<a href="#"><u>Intermittent Use of FMLA Leave</u></a>	274
21.5.10	<a href="#"><u>Prohibited Acts and Employee Remedies</u></a>	274
21.5.11	<a href="#"><u>Conclusion</u></a>	275
<b><a href="#"><u>CHAPTER 22: DUAL OFFICEHOLDING</u></a></b>		278

<b><u>Article 1: Undivided Loyalty</u></b> .....	278
22.1.1 <u>Introduction</u> .....	278
22.1.2 <u>The General Rule</u> .....	278
22.1.3 <u>When are Public Offices Incompatible?</u> .....	279
22.1.4 <u>Inconsistency between Offices</u> .....	279
22.1.5 <u>Subordination of Offices</u> .....	280
22.1.6 <u>Offices Which Serve as Checks upon Other Offices</u> .....	280
22.1.7 <u>Acceptance of Incompatible Office</u> .....	280
22.1.8 <u>Policy Considerations for Prohibiting Incompatible Office Holding</u> .....	281
22.1.9 <u>Public Office v. Public Employment</u> .....	282
22.1.10 <u>Constitutional and Statutory Prohibition and Approvals</u> .....	284
22.1.11 <u>Kansas Constitutional Provisions Prohibiting Dual Office Holding</u> .....	284
22.1.12 <u>Kansas Statutes Prohibiting Dual Office Holding</u> .....	284
22.1.13 <u>Summary</u> .....	285
22.1.14 <u>Compatible Offices</u> .....	286
22.1.15 <u>Incompatible Offices</u> .....	287
22.1.16 <u>Possibly Incompatible Offices</u> .....	288

## CALENDAR OF STATUTORY EVENTS

The following calendar is provided as a reminder of the many other duties required of a county commission and other dates and events of significance. It is suggested that each Board prepare their own calendars based on local policies and practices.

Date or Time	Duty
<b>January</b>	
January 1	Fiscal year begins
	The county appraiser must begin the valuation process and transmit real- and personal-property appraisals to the county clerk by June 1. Prior to June, appraisers send valuation notices to property owners, hold informal appeals, send informal appeal results, and then transmit all values to the county clerk.
Second Monday	Commission elects chair on or no later than 30 days from this date.
Second Monday—Odd Years	Inauguration of county officers except county treasurers and county commissioners who serve staggered terms.
<b>February</b>	
	Commissioners check inventories previously filed by county officers and department heads. Commissioners may delegate this task.
<b>March</b>	
March 1	County appraiser shall notify each taxpayer in the county annually on or before March 1 of real property valuation.
<b>April</b>	
April 1	The aggrieved taxpayer has 30 days after the mailing date of the notice to give notice to the county appraiser that he/she wants an informal meeting with the county appraiser to discuss his or her real property appraisal.
<b>May</b>	
May 1	County appraiser must notify each taxpayer of personal property valuation by May 1.
May 15	Taxpayers have until May 15 to give notice to the county appraiser about setting an informal appeal of their personal property

	<p>appraisals. The county appraiser is authorized to hold an informal meeting with all aggrieved real and personal property taxpayers who request a meeting within the proper time period.</p> <p>The county appraiser is not authorized to hold meetings on real property appraisal after May 15, except if the reason for extension is authorized under K.S.A. § 79-1404.</p>
May 20	<p>The county appraiser cannot make a final determination on real or personal property appraisal after May 20.</p> <p>Starting in 2017, if the taxpayer is not satisfied with the final determination by the county appraiser, the taxpayer can appeal the decision through the Small Claims Division of the State Board of Tax Appeal (BOTA). In practice, this replaces the hearing-officer panels under K.S.A. § 79-1606.</p> <p>Taxpayers can also appeal the valuation by filing a fee appraisal with BOTA, which the county must follow unless the county procures its own fee appraisal to rebut the taxpayer's or by filing a subsequent appeal at BOTA.</p>
Prior to June 1	<p>The county hospital board should submit a proposed budget to the commissioners. If the hospital board is elected, the hospital board should submit a proposed budget to the County Clerk.</p>
<b>June</b>	
June 1	<p>County weed supervisor transmits information regarding noxious weeds to county commission.</p>
June 15	<p>The real and personal property tax rolls must be certified and turned into the county clerk by June 15.</p>

	County Clerk notifies district of Revenue Neutral Rate
Before June 30	The Commission causes survey to be made respecting soil erosion and dust blowing. This report is filed with the county clerk, and a copy sent to the State Department of Agriculture.
June 30	The county auditor, in counties with a population between 80,000 and 300,000, will furnish the Board of County Commissioners a budget for the ensuing year. The budget should not be furnished later than thirty days prior to the first of August.
<b>July</b>	
July 5	This is the deadline for the K.S.A. § 79-1606 hearing panels, which no counties are currently using.
On or before July 15	The election official must certify to the Board of County Commissioners an itemized statement of all expenses of his/her office, including his/her salary and the salaries of deputies and other employees in the office.
On or before July 15	The K.S.A. § 79-1606 hearing process requires the county clerk to prepare an abstract of assessment rolls and forward this to the Director of Property valuation by July 15. All counties are currently using the Small Claims Division of BOTA.
July 20	District notifies County Clerk of tax rate for new year, if exceeding Revenue Neutral Rate. This tax rate becomes the maximum for the district.
After July 20	County Clerk notifies individual tax payers of new tax levy.
<b>August</b>	
On or before August 1	Governing body of the county prepares budget.
First Monday	Commission meets and determines amount of money to be raised by tax levy. Township trustees appear before commission to report probable expense to exterminate prairie dogs.

First Tuesday succeeding Monday – Even or Odd Years	Odd-year primaries for city officers, school board officers, junior college trustees, and all municipalities smaller than counties. Even-year primaries for county, state, and federal offices.
Monday following any election held on a Tuesday	The county board of canvassers (Board of County Commissioners) and county election officer meet to canvass returns and make an abstract of the election returns. <i>Except that</i> the county election officer may move the canvass to the second Thursday following the election if prior notice is published in a newspaper with general circulation in the county.
August 5	Final day to publish proposed budget and hearing notice.
August 15	Final day for hearing on county budget.
Between August 20 and September 20	District holds hearing to exceed Revenue Neutral Rate. May be same night as Budget hearing.
<b>September</b>	
September 1	Commissioners order county attorney to institute tax foreclosure proceedings against real estate unredeemed after two years.  Properties that are vacant can be foreclosed after <i>two years</i> from the redemption date. Properties that are not vacant cannot be foreclosed upon until <i>three years</i> after they went into redemption.
September 20 or before	District submits budget to Kansas State Department of Revenue.
<b>October</b>	
October 1	City and counties must levy and certify budget documents to County Clerk .
Second Tuesday – Odd Years	Inauguration of county treasurers.
<b>November</b>	
On or before November 1	County Clerk delivers tax rolls to county treasurer.
First Tuesday succeeding Monday – Even or Odd Years	Odd-year general elections for city officers, school board officers, junior college trustees, and all municipalities smaller than counties.

	Even-year general elections for county, state, and federal offices.
Monday next following any election held on a Tuesday	The county board of canvassers and county election officer meet to canvass returns and make an abstract of the election returns. <i>Except that</i> the county election officer may move the canvass to the second Thursday following publication.

[Back to top](#)



# **CHAPTER 1: INTRODUCTION TO COUNTY GOVERNMENT**

## **ARTICLE 1. PREPARATION FOR COUNTY SERVICE**

### **1.1.1 Oath**

All commissioners are required by statute to sign the following oath prior to taking office:

“I do solemnly swear (or affirm), that I will support the Constitution of the United States and the Constitution of the State of Kansas, and faithfully discharge the duties of (name of office). So help me God.”<sup>1</sup>

All oaths must be administered by laying the right hand upon the Holy Bible, or by the uplifted right hand.<sup>2</sup> Generally, the county clerk administers the oath of office, although the clerk of the court or register of deeds may also perform this function.<sup>3</sup> A re-elected commissioner should take the oath when beginning a new term. All oaths are placed on file in the county clerk’s office.

[Back to top](#)

### **1.1.2 Official Bond**

All elected county officers, including the county commissioners, must execute to the State of Kansas a corporate surety bond.<sup>4</sup> The cost of the bond is paid by the county. The bond must be good and sufficient and issued by a company or self-insurance pool licensed to do business in the state.<sup>5</sup> For commissioners, the bond must be issued before the commissioner takes office and must be conditioned on the faithful performance of office. Commissioners’ bonds must be approved by and filed with the Register of Deeds. A blanket bond for the county offices may be used to fulfill these requirements.

The Board may designate additional appointive officers or employees as needing a surety to the State of Kansas and the county. A blanket bond may serve as surety for these appointive officers or employees.<sup>6</sup>

[Back to top](#)

### **1.1.3 Conflict of Interest**

Every officer is required to file in the office of the county election officer (usually the county clerk) a statement of “substantial interest” that discloses the ownership, by the officer or the officer’s spouse, of any business interest valued at more than \$5,000, the ownership of more than five percent of a business, or the receipt of more than \$2,000 from any business in one calendar year. In addition to the requirement of financial disclosure by elected officials, governing body members are prohibited from making contracts with any business in which they are employed or have a substantial interest unless:

- 1) The contracts are let after competitive bidding;
- 2) The contracts are for property or services for which the price or rate is fixed by law; or
- 3) The officer abstains from any action on the contract.<sup>7</sup>

A number of local governments have enacted their own conflict of interest provisions to supplement the state statute. Elected officials who have questions concerning the application of the Kansas conflict of interest law can contact the Governmental Ethics Commission. The Kansas Association of County Commissioners, an affiliate organization of KAC, also has created a model ethics code that may be adopted by the county.

[Back to top](#)

#### **1. 1.4 Incompatibility of Offices**

Occasionally a person holding one public office or position is elected or appointed to another public office. A question then arises as to whether the person may hold both offices. A number of statutes forbid certain county officers from holding another public office.<sup>8</sup> If the offices are incompatible, acceptance of the second office automatically results in a resignation of the first office.

The courts have held that in the absence of a constitutional or statutory prohibition, one person may hold two offices if the offices are not “incompatible.” The question of whether two offices are incompatible is usually one for the courts to decide. The purpose of the rule against holding two incompatible offices is to assure that public officers will give their undivided loyalty in the discharge of their duties. Thus, offices are considered to be incompatible when the performance of the duties of one office in some way interferes with the duties of the other office. Incompatibility also exists where the function of one office is to check or supervise the other office. Where state statutes provide no clear answer as to whether particular offices are incompatible, attorney general opinions and case law may provide guidance. Incompatibility of offices is covered more thoroughly in Chapter 22.

[Back to top](#)

#### **1.1.5 Working for the County**

Many county commissioners ask if they can also work for the county as an employee. Although the doctrine of incompatibility generally applies to dual office holding, the attorney general has extended it to governing body members working for the county as an employee. If the governing body member is compensated by the county, incompatibility exists because the governing body member is in a position to vote on the amount of compensation for that position.<sup>9</sup>

[Back to top](#)

## **ARTICLE 2. INTRODUCTION TO COUNTY GOVERNMENT**

### **1.2.1 County Defined**

A county is a political subdivision of the state and is usually considered to be an instrumentality or arm of the state government. Counties in Kansas were first formed when Kansas was a territory. The 105 counties are named, and their boundaries described in K.S.A. § 18-101 *et seq.* A county is a “body corporate and politic.”<sup>10</sup> The Legislature enacted home rule power—the capacity to regulate affairs within the community—for counties in 1974. This gives counties a high degree of self-government (See Chapter 4, “Home Rule”).

A county is distinguishable from a city in that a county is a state-created quasi-corporation that serves as an agent to perform governmental and political functions. In contrast, a city is a voluntary corporation organized by the action of its own inhabitants for their own local good.

[Back to top](#)

### **1.2.2 County Services**

Counties have two separate and distinct roles when providing services. The first is an agent of the state for traditional government functions. The second is more like a municipality by providing broader government action. Historically, counties were responsible for public health, safety and welfare matters, and for providing community infrastructure—roads, bridges, parks, and utilities needed to support daily life. Recently, however, community demands and expectations have compelled even the smallest counties to undertake more services such as economic development, comprehensive planning, zoning, environmental protection, mental health centers, senior citizens programs, health agencies, and drug counseling.

[Back to top](#)

### **1.2.3 Organization of Board of County Commissioners**

The Board of County Commissioners (“Board”) meets on the second Monday in January of each year, or within 30 days after that date, and organizes by electing a chair for a term of one year.<sup>11</sup> Currently, there are two exceptions to that rule. The Unified Government of Wyandotte County/Kansas City, Kansas has an elected Mayor/CEO and Johnson County directly elects its Chair. The chair presides over all meetings during the year, if present. In the absence of the chair, a temporary chair may be elected from the present members.<sup>12</sup> The organizational meeting is one week later than the usual regular meeting that falls on the first Monday of the month. The organizational meeting is required by law. The Board can conduct additional business at this meeting. Because the organizational meeting is a public meeting, the public must be notified of the time and location of the meeting. In case of death or resignation of the chair, the other commissioners, at any regular or special meeting, must elect one of their members to fill the vacancy.

[Back to top](#)

#### **1.2.4 Organizational Meeting**

On the day of the organization of the Board, or as soon after as possible, the Board is required to divide the county into three commissioner districts or such number of districts as is prescribed by resolution of the Board. The districts should be as compact and equal in population as possible and shall be numbered accordingly, subject to alteration at least once every three years. The boundaries of the districts must follow the boundaries of the voting precincts.<sup>13</sup> Population figures are available from the Secretary of State's Office.<sup>14</sup>

The Board may, by resolution, divide the county into three, five, or seven commissioner districts provided that any change is approved by a majority of qualified electors voting at the next general election following not less than 60 days after the adoption of said resolution, in an election which all the qualified electors of the county are entitled to vote.<sup>15</sup> K.S.A. § 19-204a states that if the Board fails to adopt such resolution within the time prescribed, the chief judge of the district court of the county, on or before the following January 31, shall order the county divided into the appropriate number of districts. Several Kansas counties have changed to five commissioner districts. The Unified Government of Wyandotte/Kansas City, Kansas has ten county commissioners and a Mayor/CEO. Johnson County has seven commissioners. Greeley County is a unified government with the city of Tribune and has five commissioners. Two members are elected by city residents, two by rural residents, and one is elected at-large. Sherman County may elect its commissioners at large and therefore each commissioner may live anywhere in the county without confinement to a particular district.<sup>16</sup>

Various statutes authorize the Board to appoint certain county officials including: county engineer, appraiser, director of public works, health officer, and other county positions.<sup>17</sup>

[Back to top](#)

#### **1.2.5 Vacancy in Office of Commissioner**

When a vacancy occurs in the office of county commissioner, replacement appointments must follow the procedures in K.S.A. § 25-309. If a vacancy occurs on the Board before May 1 of the first even-numbered year following the start of the term, the office is to be filled at the next general election. In the interim, a resident of the district must be appointed until a successor can be elected at the next general election.<sup>18</sup>

[Back to top](#)

### **ARTICLE 3. POWERS OF THE BOARD OF COUNTY COMMISSIONERS**

Much of this Desk Book deals with the legal powers and duties of county commissioners. While the statutory powers of counties are found throughout the Kansas statutes, most of the applicable statutes are found in K.S.A. Chapter 19. K.S.A. § 19-212 lists the Board's general statutory powers.

### **1.3.1 The Board of County Commissioners' Authority**

The ultimate authority in a county is vested in its duly constituted governing body when it is in a meeting and in open session. K.S.A. § 19-212 vests the Board with broad powers in conducting the business of the county at a meeting.<sup>19</sup>

Occasionally, problems may arise because an individual county commissioner wrongly assumes vast decision-making powers. But it is the Board that has the basic powers of counties, and the governing body does not legally exist except in an official meeting.<sup>20</sup> When the Board is not in session, the individual members have no more legal authority than do private citizens.

As an example, the Attorney General has opined that an individual county commissioner does not have the authority to unilaterally examine an employee's personnel records. However, the Board may inspect county personnel records if appropriate actions are taken at an open meeting.<sup>21</sup>

The statutory powers found in K.S.A. § 19-212 are as follows:

- 1) To make such orders concerning the property belonging to the county as they may deem expedient, which includes establishing regulations by resolution for the use of the property and providing penalties for violations of these resolutions.
- 2) To examine and settle all accounts (receipts and expenses) of the county and, after they have been settled, to issue county orders.
- 3) To purchase sites, to build and repair county buildings, and to insure the buildings in the name of the county treasurer for the benefit of the county. If there are no county buildings, the Board can provide rooms for county purposes.
- 4) To purchase an existing building and site in order to provide additional space for county offices.
- 5) Apportion and order the levying of taxes.
- 6) To represent the county, take care of county property, and manage the business and concerns of the county, in all cases where no other provision is made by law.
- 7) To set off, organize, and change the boundaries of townships, to designate and give names to the new townships, and to appoint township officers who will serve until the next general election.
- 8) To establish one or more election precincts in any township for the convenience and requirements of township inhabitants.

- 9) To lay out, alter, or discontinue any road running through one or more townships and to provide other duties with respect to roads.
- 10) To enter into contracts with any landowner for the construction and maintenance of underpasses, bridges, and drainage ways under and across any county road in connection with the locating, opening, laying out, construction, or alteration of any county road running across or through such landowner's land, whenever in the judgment of the Board such contract is in the best interests of the county. Any such contract entered into by the Board shall be binding upon subsequent boards of county commissioners and shall not be terminated without the written consent of the landowner or his heirs or assigns.
- 11) To contract for the protection and promotion of the public health and welfare.
- 12) To acquire, own, and operate a county airport.
- 13) To perform such other duties as are, or may be, prescribed by law.

[Back to top](#)

### **1.3.2 Recurring Monthly Duties of the Commissioners**

There are certain recurring monthly duties that county officials must follow:

- 1) K.S.A. § 19-208 requires the Board to pay authorized bills on a monthly basis.
- 2) K.S.A. § 79-2010 requires the Board to certify to the county treasurer and county attorney a list of claims within two days of their allowance.
- 3) K.S.A. § 19-228 requires the Board to publish a list of claims that were paid during the quarter. If the Board does not publish the claims each quarter, they can publish an itemized statement of expenditures from each fund.<sup>22</sup> If the Board decides to follow this procedure, they need to give notice that a detailed list of expenditures is available for review at the county clerk's office.
- 4) K.S.A. § 19-605 requires the county auditor in counties with a population over 40,000 and not more than 60,000 to file monthly reports with the county clerk.<sup>23</sup> The county clerk is required to present the reports to the Board.
- 5) K.S.A. § 19-206 requires the Board to meet in regular session, at the county seat, on the days and times established by resolution of the Board.
- 6) K.S.A. § 19-209 requires the Board in counties with a population over 50,000 to meet twice a week.

[Back to top](#)

## **ARTICLE 4. COUNTY COMMISSIONERS, MISCELLANEOUS**

### **1.4.1 Travel Expenses**

K.S.A. § 28-169 provides that in any county having a population of 80,000 or less, the Board shall allow any officer, deputy, or employee his or her actual and necessary traveling expenses in the performance of official duties and allow mileage for each actual mile necessarily traveled in a privately owned vehicle in the performance of his or her duties. This does not require the Board to reimburse officials and employees for travel between their place of residence and their place of work.<sup>24</sup> K.S.A. § 75-3203a outlines the rate for state employees, but the county commission may set a different rate. The maximum mileage for state employees can be found at the Department of Administration's website at [www.da.ks.gov](http://www.da.ks.gov), under Accounts and Reports. It is updated periodically. The maximum-mileage allowance set by the IRS generally increases each year. Any amount paid to an employee above the current IRS maximum-mileage allowance must be included in the employee's gross income for that taxable year. Some counties prefer to provide a monthly car allowance rather than a mileage reimbursement.

[Back to top](#)

### **1.4.2 Working with the News Media**

A good relationship with your local news media can be one of the most important tasks you and your county commission will undertake. Public officials and the news media must be able to operate in an atmosphere of mutual trust and respect that goes beyond simple compliance with the provisions of the Kansas Open Meetings and Open Records Laws.

Here are a few pointers that you may want to consider when dealing with the news media:

1. An informed citizenry is a better citizenry.
2. Never lie to the news media. Being caught in a lie is the most damaging thing you can do to your credibility and to the credibility of your office.
3. Develop a good line of two-way communication with those individuals who report county news. And it's never too late to work at improving a poor relationship with reporters.
4. Remember that the news media is the public's main source of information on the status of the county.
5. Remember that reporters are constantly under deadline pressure, therefore their calls merit prompt response.
6. There will be occasions when you will feel you have been misquoted by a reporter. Remember that those things happen. If they occur frequently, talk with the reporter and try to reconcile any differences.

7. Even if a news story is unflattering, remember that the media is serving their role in the pursuit of a better county in which to live and work.
8. Practice your message and use a neutral listener to help ensure your message is accurate and well-received.
9. Use social media to bring your message directly to the citizens. Twitter and Facebook are two free formats to help you shape a message and better connect with citizens, businesses, and interested groups. KAC can help guide your county's efforts.

[Back to top](#)



## CHAPTER 1 ENDNOTES

---

<sup>1</sup> K.S.A. § 54-106.

<sup>2</sup> K.S.A. § 54-102.

<sup>3</sup> K.S.A. § 54-101.

<sup>4</sup> K.S.A. § 19-4201 *et seq.*

<sup>5</sup> See *City of Concordia v. American States Ins.*, No. 89,200, 2003 WL 21948009 (Kan. App., Aug. 8, 2003).

<sup>6</sup> *Id.*

<sup>7</sup> K.S.A. § 75-4304.

<sup>8</sup> K.S.A. §§ 19-205, 19-705, 19-505.

<sup>9</sup> A.G. 82-111.

<sup>10</sup> K.S.A. § 19-101.

<sup>11</sup> K.S.A. § 19-219.

<sup>12</sup> *Id.*

<sup>13</sup> *Anderson v. Comm'rs of Cowley Co.*, 207 Kan. 548, 550, 485 P.2d 1260 (1971); *see also* K.S.A. § 19-204.

<sup>14</sup> K.S.A. § 11-201(a).

<sup>15</sup> K.S.A. § 19-204(c).

<sup>16</sup> K.S.A. § 19-204b.

<sup>17</sup> See K.S.A. §§ 19-4501 and 65-201, respectively.

<sup>18</sup> K.S.A. § 19-203.

<sup>19</sup> See MEETINGS, Powers of County Board, this Deskbook at 6.1.2.

<sup>20</sup> K.S.A. § 19-103 states: "The powers of a county as a body politic and corporate shall be exercised by a board of county commissioners." See also *Thacker & Stephens v. Comm'rs of Jefferson Co.*, 13 Kan. 182, 189-90 (1874).

<sup>21</sup> A.G. 94-121.

<sup>22</sup> K.S.A. § 19-228(b).

<sup>23</sup> See K.S.A. § 19-601 *et seq.* (for the duties and functions of the county auditor).

<sup>24</sup> A.G. 2004-30.

## CHAPTER 2: QUALIFICATIONS OF CANDIDATES AND PERSONS

The Kansas Secretary of State serves as a useful resource for election matters:

<https://sos.kansas.gov/>. The Office of the Secretary of State oversees all national and state elections in Kansas and does so in conjunction with the counties. The following chart lists the qualifications of candidates for elected offices. It was part of a Secretary of State publication on candidates for office. See [www.sos.ks.gov/elections/19elec/2019-Kansas-Election-Standards-Chapter-IV-Candidates.pdf](http://www.sos.ks.gov/elections/19elec/2019-Kansas-Election-Standards-Chapter-IV-Candidates.pdf)

Office Sought	Statutes	Elector at Time of Filing	Resident at Time of Filing	Elector on Election Day	Resident on Election Day	Elector Upon Taking	Resident Upon Taking Office	Minimum Bond	Vacancy Filled by an Elector	Vacancy Filled by a Resident
<b>County Offices</b>										
County Commission Clerk	19-202, -203	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
Treasurer								\$10,000	Yes	Yes
Attorney								\$25,000	Yes	Yes
Sheriff	19-801b, 804	Yes	Yes	Yes	Yes	Yes	Yes	\$2,000	Yes	Yes
Register of Deeds								\$10,000	Yes	Yes
<b>City Offices</b>										
1st Class Cities	Most 1st Class Cities have exempted themselves through charter ordinance. See the individual cities for more information.									
2nd Class Cities										
City Manager	12-1036b			Yes	Yes	Yes	Yes	By Ordinance		
Commission	14-1301			Yes	Yes	Yes	Yes	\$5,000		
Mayor-Council	14-109, -204, -205			Yes	Yes	Yes	Yes			
Modified Mayor-Council	12-10a02			Yes	Yes	Yes	Yes			
3rd Class Cities								By Ordinance		
City Manager	12-1036b			Yes	Yes	Yes	Yes	\$2,000		
Commission	15-1401			Yes	Yes	Yes	Yes	\$2,000		
Mayor-Council	15-209			Yes	Yes	Yes	Yes			
Modified Mayor-Council	12-10a02			Yes	Yes	Yes	Yes			
<b>Local Offices</b>										
School Board	25-2020, -2022	Yes								
Community College Trustee	71-1407, -1414	Yes	Yes				Yes			
Township Offices	80-201, -202			Yes	Yes	Yes	Yes			
<b>National Offices</b>										
U.S. President and VP	U.S. Const. Art. 2									
U.S. Senators	U.S. Const. Art. 1				Yes, of State		Yes, of State			
U.S. Representatives	U.S. Const. Art. 1				Yes, of State		Yes, of State			
<b>State Offices</b>										
Governor / Lt. Governor	KS Const. Art. 1									
Secretary of State	KS Const. Art. 1									
Attorney General	KS Const. Art. 1									
Insurance Commissioner	40-109					Yes	Yes			
State Treasurer	75-601, et seq.						Yes			
Board of Education	25-1903; 72-7503	Yes	Yes				Yes			
Senators / Representatives	KS Const. Art. 2	Yes	Yes	Yes	Yes	Yes	Yes			
District Court Judges	20-331-334, 25-312a						Yes			
District Attorney	22a-102	Yes	Yes							
<b>Political Party</b>										
Precinct Person	25-3801	Yes	Yes	Yes	Yes	Yes	Yes			

[Back to top](#)

## CHAPTER 3: TIPS FOR GOVERNING

### 67 SUGGESTIONS ON HOW GOVERNING BODY MEMBERS CAN BETTER GOVERN

By E.A. “Ernie” Mosher

*Mr. Mosher served for 32 years as the Executive Secretary of The League of Kansas Municipalities and as Editor of Kansas Government Journal. He also served for many years as secretary for the Kansas Official Council, Kansas County Commissioners Association, and the Kansas Local Government Research Corporation.*

Governing is clearly more of an art than a science. There are no ultimate answers on how to govern. Different approaches are to be expected and probably desired. However, there do seem to be some fundamentals. This report attempts to set forth some of these fundamentals.

These tips for successful and effective public service are intended primarily for the use of those elected as local governing body members. While most suggestions relate to individual officers, others apply to the governing body as a whole. The two types are interdependent—the capacity of a governing body to effectively govern is dependent on the collective capacities of at least the majority of its members.

The embryos for this list began more than 35 years ago. Since then, they have been revised and expanded—and some deleted—as a result of personal observation and comments received from those who serve in the trenches of local government. The suggestions are not in any priority order. Not all are universally accepted, but all of them are worth thinking about by those who would serve the public through elective office.

- 1) Learn all you can about your county, its history, its operation, its financing. Know your county resolutions. Dust off your comprehensive plan.
- 2) Devote sufficient time to your job and study the present and future problems of your county.
- 3) Don't burn yourself out on the little things, while still recognizing that they are often of concern to the public. Save some energy and time for really important matters.
- 4) Don't act as a committee of one. Governing a county requires a team effort—practically and legally.
- 5) Be courteous and civil. Don't let honest differences of opinion degenerate into personality conflicts. Recognize that there are, and ought to be, differences of opinions and judgment—or we wouldn't need elected governing bodies!

- 6) Remember that you represent all the people of your county, not just neighbors and friends, not just your county district. Commissioners don't need to love each other, but they do need to respect each other.
- 7) Be open-minded. Be wary of personal experiences coloring your public decisions. Remember there is a temptation to stand where you sit.
- 8) Take your budget preparation job seriously, for it determines what your county does or does not do for the coming year and will influence what happens in the future years as well. The budget is the biggest policy development tool available to govern the county.
- 9) Establish official policy statements. Written policy statements let the public, and the staff, know where they stand. They help the governing body govern and writing them provides a process to develop consensus. Remember that if the governing body does not establish written policies, commissioners can't complain when elected or appointed administrative officers do their own thing.
- 10) Make decisions on the basis of public policy and be consistent. Treat similar situations, similarly, and avoid favoritism.
- 11) Focus your attention on ways to prevent problems, rather than trying to solve them once they occur. Filling potholes is one approach to governing. Developing plans and processes to prevent them is another. "Pothole fillers" often get re-elected, but they leave little for the future.
- 12) Be wary of special interest groups who want something done now, their way. Remember that there is a big difference between depth of support and breadth of support. Your job is to find the long-term public interest of the community as a whole, and you may be hearing from the wrong people.
- 13) Don't rush to judgment. Few final actions have to be taken at the first meeting they are considered. Avoid "crisis management."
- 14) Don't be afraid of change. Don't be content to just follow the routine of your predecessors. Charge your appointed officers and employees with being responsible for new ideas and better ways. Listen to what they have to say.
- 15) Be careful of what you say. Don't give hasty answers when you are not sure of the right answer. It may be embarrassing to appear ignorant, but it can be more embarrassing and damaging to tell a person something which is wrong.

- 16) As an individual, even if you are the Board chairman, don't make promises you can't deliver! Most decisions and actions require approval of the governing body, and this takes a majority vote.
- 17) Remember that you have legal authority as a governing body member only when the governing body is in legal session.
- 18) Don't spring surprises on your fellow commissioners or staff, especially at formal meetings. If a matter is worth bringing up for discussion, it's worth being on the agenda. Surprises may get you some publicity, but at the embarrassment of others. They tend to erode the "team" approach to governance.
- 19) Participate in official meetings with the dignity and decorum fitting those who hold a position of public trust. Personal dress and courteous behavior at meetings help create an environment for making sound public decisions.
- 20) Conduct your public meetings with some formality and follow rules of procedure. Have an agenda and follow it. Most experienced governing body members agree that formal meetings really expedite the process and tend to promote better decision making.
- 21) Don't be afraid to ask questions. It is one of the ways we learn. There is no such thing as a dumb question—just foolish answers.
- 22) Do your homework and study agenda material before meetings. Spend as much time preparing for meetings as you do in meetings. Read.
- 23) Vote yes or no on motions. Don't cop out by abstaining, except when you have a conflict of interest. A pass does not relieve you of responsibility when some decision must be made.
- 24) Maintain the team. Once a majority decision of the governing body has been made, respect that official position, and defend it if needed, even if you personally disagree.
- 25) Respect the letter and intent of the open meetings law. But also keep private and confidential matters to yourself—don't gossip.
- 26) Retain competent key employees, pay them well, trust their professional judgment, and recognize and appreciate their talents.
- 27) Don't bypass the system! If you have a chief administrative office, stick to policy making and avoid personal involvement in the day-to-day operations of the county. If you don't have a chief administrative officer, make sure you have some management system that officers, employees and the public understand.

- 28) Don't let others bypass the system. Insist that people such as suppliers first work with your chief administrative officer or department heads. If direct contact with governing body members is necessary, it should be with the governing body as a whole, or by committee, and not on a one-on-one basis.
- 29) Don't exercise authority and then reject responsibility. Don't pass the buck to the staff or employees when they are only following your policies or decisions. And don't blame them when they do something you don't like when you have never established a policy in the first place.
- 30) Don't always take no for an answer. The right question may be, "How can we do this?" rather than, "May we do this?" This approach is especially important when dealing with attorneys.
- 31) Think home rule! Don't hide behind state laws where there may be local discretion to determine local affairs.
- 32) Be receptive to new ideas. Learn to evaluate recommendations and alternative courses of action. Request your staff to provide options, not just one approach. Encourage imaginative solutions.
- 33) Avoid taking short-term gains at the expense of long-term losses. Be concerned with the long-term future of the county.
- 34) Search for the public interest, balancing personal rights and property interests, the possible harm to a few versus the good of the many, and long-term gains over short-term losses. Recognize that in some situations, everyone can't be a winner! "Win-win" situations are nice but often not realistic—which is another reason why we have governing bodies!
- 35) Prize effectiveness. Concentrate on making your county government more effective, not just more efficient. Being efficient means that you build a road economically, whether or not it is needed. Effective means that road money is efficiently spent where it is most needed, now and in the future.
- 36) Establish a simple follow-up and monitoring system when the Board orders something to be done. Too often there is a gap between expectations and reality, between ordering something done and having it done.
- 37) Remember that the governing body has the ultimate fiduciary responsibility and make sure that you get, and understand, the monthly financial reports you need. Be concerned with the long-term finances of your country, not just this year's budget.

- 38) Remember that public funds may only be used for public purposes. Make sure that any county money “given” to another public agency, non-profit organization, or private group is in fact used for a legitimate public purpose.
- 39) Always remember that counties are for people! Be concerned with the total development—physical, economic, and social—of your community.
- 40) Do not act as if the county operates in a vacuum. Counties—and county commissioners—must work within the intergovernmental system to be really effective. Keep in contact and cooperate with your federal, state, and other local officials.
- 41) Know your neighbors! Get to know the officials of neighboring and similar size counties. Visit other counties, particularly those with a reputation for being well-run.
- 42) Learn to listen—really listen—to your fellow governing body members and to the public. Hear what they are trying to say, not just the words spoken.
- 43) Keep your constituents informed, encourage citizen participation, and promote citizenship. In other words, be a good politician!
- 44) Communicate outside. Be friendly and deal effectively with the news media. Make sure what you say is what you mean. Lack of good communication with the media and the public is a problem for most governments.
- 45) Communicate inside. Maintain a continuous information exchange. Counties should be one government: not just a collection of agencies and officers.
- 46) Remember that what you say, privately and publicly, will often be news. You live in a glass house. Avoid over-publicizing minor problems.
- 47) Expect, and respect, citizen complaints. Make sure that you and your county have a way to effectively deal with them. Have a follow-up system.
- 48) Be careful about rumors. Check them all out. Help squelch them when you know they are false.
- 49) Appoint citizen advisory committees and task forces when you need them but be prepared to follow their advice if you use them.
- 50) Take care in your appointments to boards and commissions. Make sure they are willing and capable as well as representative of the whole community.

- 51) Never allow a conflict of interest to arise between your public duties and your private interests. Be sensitive to actions you take that might even give the appearance of impropriety.
- 52) Be concerned about ethics and values. Governing bodies should help create a set of values guiding the actions of county officers and employees.
- 53) Seek help. Use manuals, guides, and other technical assistance and information available from KAC, the League, and other agencies. Attend workshops and conferences held for the benefit of you and your county.
- 54) Establish some personal goals and objectives. What do you want to accomplish this year? Next year? How else will you know whether you're making a difference?
- 55) Develop some short-term and long-term goals and objectives for your county and check your progress at least every six months.
- 56) Help your county develop a vision of the future. Plan from the future back to the present. No vision, no plan. One of the subtle but important purposes of a governing body and leadership is to establish a vision for the future.
- 57) Try to create a *sense of community* within your county, so that people understand that what happens to their county affects their personal lives and future.
- 58) Try to create a *sense of ownership* among county officers and employees. Promote commitment to public service and share decisions whenever possible.
- 59) Focus on the future. Try to leave your county better than that which you inherited as a county officer. Remember the ancient Athenian Oath.
- 60) Be a leader, as well as part of the team of elected and appointed officials who were selected to make your county an even better place to live.
- 61) Be patient. Counties, like Rome, were not built in a day. Keep trying.
- 62) At least once a year, schedule a governing body discussion about how well you are governing. Review your processes and procedures. Sit back and ask, "How are we doing? How can we do things better?"
- 63) Keep in mind that there is a vast difference between the *quantity* of time spent governing and the *quality* and effectiveness of that time. Busy people often make the best commissioners.



- 64) Timing is important. Good ideas don't come until their time has come! Persuasion and leadership can help create the right time for action. Poor timing of your proposal can result in needless frustration.
- 65) Pace yourself. Limit the number of "outside" meetings you attend. *Set some priorities*, including the need to spend time with your family. Recognize that life is dependent on a whole lot of things you have little control over.
- 66) Be enthusiastic about your public service and the privilege you have, and let the public know it. But maintain your sense of humor. Don't take yourself, or the business of governing, so seriously that you don't enjoy it. It should be a *fun* as well as rewarding experience.
- 67) Finally, celebrate! Always focusing on problems and issues may leave you, the governing body, and the public, to believe that nothing positive ever happens. Good things do happen! Let the public share your successes.

[Back to top](#)

## **CHAPTER 4: COUNTY HOME RULE**

### **ARTICLE 1: INTRODUCTION TO HOME RULE**

#### **4.1.1 General**

Prior to the adoption of constitutional and statutory home rule, Kansas' cities and counties were subject to the exclusive control of the legislature. Local governments could act only under the express authority of the legislature. This limitation on local authority is known as Dillon's rule.<sup>1</sup> Under Dillon's rule, municipalities are "mere creatures of the state, powerless in their own right, and dependent upon enabling legislation for every move they make."<sup>2</sup>

The Kansas Legislature gave counties broad home rule power of local governance in 1974. This was accomplished by amending the county general powers statute<sup>3</sup>, and the enactment of other statutes that define the scope of home rule powers and prescribe the procedure for exercising such powers.<sup>4</sup> These statutory provisions were modeled after Article 12, Section 5 of the Kansas Constitution that granted home rule powers to cities in 1961. As in the case of city home rule powers, the home rule powers granted to counties are to be "liberally construed" for the purpose of providing the largest measure of self-government.<sup>5</sup>

Two independent bodies, the state legislature and the courts, impact county home rule powers. The legislature may expand or contract the scope of county home rule, but only on a prospective or future basis. The courts review a specific resolution or prior action by the commission to determine if the act falls within the parameters of county home rule as defined in the statutes. Courts have been unpredictable in their findings. Between court decisions and legislative limits, Kansas counties have seen a rise in restrictions on county home rule.<sup>6</sup>

[Back to top](#)

#### **4.1.2 City v. County Home Rule**

Although there are similarities between city and county home rule, there are important differences. City home rule is a grant of power for self-government from the people of the state through the Kansas Constitution.<sup>7</sup> In comparison, county home rule is an enactment of the legislature, which means the legislature can change or even eliminate county home rule.

[Back to top](#)

### **ARTICLE 2: SPECIFIC HOME RULE RESTRICTIONS**

#### **4.2.1 General**

There are a number of general restrictions on the home rule powers of Kansas counties. For example, the power must be exercised in an area that relates to county business, be a matter of local legislation and administration, and must meet state and federal constitutional requirements.

As originally enacted, the home rule statute listed only eight areas in which the exercise of county home rule power was limited or prohibited. The list of restrictions has now grown to around 40. Most of the added restrictions prohibit use of a charter resolution to affect various non-uniform acts of the legislature. They are often imposed by the legislature in response to unpopular legislative acts passed by counties.

Counties are prohibited from exercising home rule powers (either by ordinary resolution or by charter resolution) in the following areas:<sup>8</sup>

- (1) Acts of the legislature that apply uniformly to all counties.
- (2) Courts.
- (3) Limits of indebtedness.
- (4) Superseding or impairing city home rule powers without the city's consent.
- (5) Social welfare administered under state law.
- (6) Election matters.
- (7) Levying a retailer's sales tax except pursuant to authorizing statutes.
- (8) Statutes made non-uniform because of the adoption of a county charter.
- (9) Levying taxes on real property contrary to the tax increment financing law.
- (10) Exempting from any statute authorizing or requiring the levy of taxes.
- (11) Hospitals and related facilities, under K.S.A. § 19-4601 *et seq.*
- (12) Levying taxes based upon income, except for gross earnings taxes authorized by statute.
- (13) Appointment and qualifications of the county appraiser.
- (14) Certain deputy county officer statutes.
- (15) County buildings under K.S.A. §§ 19-15,139 to 19-15,141.
- (16) Library boards.
- (17) Sale of county property under K.S.A. § 19-211.
- (18) Mental health centers under K.S.A. § 19-4001 *et seq.*
- (19) Regulating certain aspects of the production or drilling of any oil or gas wells.
- (20) Local Alcoholic Liquor Fund (K.S.A. § 79-41a04).
- (21) Appointment of hearing officers and panels to hear appeals from valuation and classification of property (K.S.A. § 79-1611).
- (22) Arbitration process in certain counties for property valuation disputes (K.S.A. § 79-1494).
- (23) Residency requirements for commissioners (K.S.A. § 19-202).
- (24) Commissioner districts (K.S.A. § 19-204).
- (25) Excise, severance or any other tax in the nature of an excise tax upon the physical severance and production of any mineral or other material from the earth or water.
- (26) K.S.A. §§ 79-2017 or 79-2101 regarding the collection of delinquent taxes.
- (27) Additional requirements for hog farming.
- (28) Use of land/issuance of bonds provisions of K.S.A. § 80-121 regarding the acquisition of land for townships by county commissioners.
- (29) Publication requirements for quarterly or monthly expenditures.

- (30) Wireless enhanced 911 statutes.
- (31) Use of eminent domain for Cowley County.
- (32) Liquor Control Act, but counties may adopt provisions that are not in conflict with it.
- (33) Cereal Malt Beverage Act, but counties may adopt provisions that are not in conflict with it.
- (34) Kansas Lottery Act.
- (35) Kansas Expanded Lottery Act.
- (36) The Eminent Domain Procedure Act.
- (37) Any county granted authority under Johnson County Education Research Triangle Authorization Act are subject to the limitations imposed by that act.
- (38) No county may act pursuant to authority under Johnson County Education Research Triangle Authorization Act unless specifically authorized by that act.
- (39) The taking of shooting ranges via eminent domain, except as necessary for infrastructure additions or improvements, such as highways, waterways, or utilities (K.S.A. § 58-3224).
- (40) Requirements regarding local health officer orders, county commission approval.

[Back to top](#)

#### **4.2.2 Uniform Application**

If a state law is uniformly applicable to all of the counties in the state as a whole, the county cannot pass any resolution in conflict with the uniform state law.<sup>9</sup> If the law applies to all or some Kansas counties but does not apply in the same way to each county in the state, the county may opt out of the statute by using charter resolutions. The laws and procedures governing charter resolutions are discussed in the next chapter.

To determine whether a Kansas state law is subject to exemption or modification by county charter resolution, county commissioners—with the help of the county counselor—must examine the legislative act to see whether it applies in the same way to all counties. If the act treats one county differently than other counties, it does not apply uniformly.

A statute that appears to be uniform does not preclude use of a charter resolution if the statute is part of an act that does not apply uniformly. The term “act” is not the same as “statute.” As noted by the Kansas Supreme Court, “the division into chapter, article and sections does not have the effect of making separate enactments of a bill passed by the legislature.”<sup>10</sup> For example, the legislature may enact a bill containing ten sections. The sections of the bill will appear as ten separate statutes in the statute book, but they are all part of a single act of the legislature. If any of the statutes composing the act do not apply uniformly to all counties, the entire act is considered not to apply uniformly. Even those statutes within the act, which do apply uniformly, are subject to exemption or modification by charter resolution.<sup>11</sup>

Although an act applies uniformly to all counties, the requirement for uniformity is not met if there is another act on the same subject that makes an exception for one or more counties. The Kansas Supreme Court has held that all acts on the same subject are to be construed together (*in pari materia*) as a single act. Thus, a uniformly applicable act may become non-uniform

because of an exception in one of the acts.<sup>12</sup> In applying this rule of construction, the attorney general has opined that the budget law that applies uniformly to all counties is not uniformly applicable when construed with another act that makes exceptions.<sup>13</sup>

[Back to top](#)

### **ARTICLE 3: POLICE POWER**

Home rule power includes the authority to enact laws relating to several areas, but the broadest area of local regulation is often referred to as “police power.” Police power is generally wielded to protect the public health, safety, morals, or general welfare of the public.<sup>14</sup>

The use of police power is often exercised by counties in regulating business. Regulations and restrictions on commercial signs fall under a county’s police power. Courts reviewing sign restrictions often look to the issue of free speech under the First Amendment to determine if the restriction is reasonable.<sup>15</sup> Regulation of adult entertainment business is another type of business regulation intended to protect the citizens’ morals and general welfare.

Other examples of police power enactments include animal control and nuisance abatement.

[Back to top](#)

### **ARTICLE 4: HOME RULE TAXATION**

The county home rule statute did not specifically authorize taxation when enacted. The attorney general opined as early as 1974 that the power to tax is included in the grant of power to legislate on matters of local legislation. Otherwise, the legislature would not have found it necessary to restrict the power of a county to impose a sales tax in the grant of home rule power.<sup>16</sup> In that opinion, the attorney general opined that a county could levy a property tax to support activities for the 1976 bi-centennial of the United States.<sup>17</sup> The attorney general had also opined that counties may use home rule to impose an earnings tax;<sup>18</sup> however, K.S.A. § 19-101a(12) now prohibits counties from levying an income tax. K.S.A. § 19-101a(7) also limits a county’s sales tax authority.

K.S.A. § 19-101a(9) includes additional restrictions on the power to tax. Under the law, if a county levies a property tax under a home rule resolution within any redevelopment project area, the resolution must specify that a portion of the tax will pay for bonds issued by a city pursuant to the tax increment financing law.<sup>19</sup> Additionally, counties may not exempt from or modify any statute authorizing or requiring the levy of taxes unless the charter resolution provides that a portion of the proceeds of such levy will help pay a portion of the principal and interest on bonds issued by cities under the authority of K.S.A. § 12-1774.<sup>20</sup>

In 1977, the legislature removed any doubts about the power of counties to levy taxes by enactment of K.S.A. § 19-117, which prescribes procedure for levying any tax, excise, fee, charge, or other exaction other than permit fees or license fees for regulatory purposes. The procedure is similar to the charter resolution procedure discussed in Article 4 of Chapter 5.

[Back to top](#)

## CHAPTER 4 ENDNOTES

---

<sup>1</sup> Pierce, *Home Rule and Municipal Environmental Regulation in Kansas*, 26 Kan. L. Rev. 535, 535 (1978).

<sup>2</sup> Clark, *State Control of Local Government in Kansas: Special Legislation and Home Rule*, 20 Kan. L. Rev. 631, 654 (1971).

<sup>3</sup> K.S.A. § 19-101.

<sup>4</sup> K.S.A. § 19-101a *et seq.*

<sup>5</sup> K.S.A. § 19-101c.

<sup>6</sup> Michael Heim, *Local Government Law*, 3- 31 through 3-38 (6th ed. 2009).

<sup>7</sup> Kan. Const. Art. 12 § 5 (1988). The Kansas Supreme Court has recognized the inherent power in the constitution, which “is paramount over the governor, legislature, and courts and receives its force from the express will of the people.” *VanSickle v. Shanahan*, 212 Kan. 426, 451, 511 P.2d 223, 243 (1973); *see also Motion for Rehearing or Modification by League of Kansas Municipalities*, at 23-24.

<sup>8</sup> K.S.A. § 19-101a.

<sup>9</sup> K.S.A. § 19-101a(a)(1).

<sup>10</sup> *City of Junction City v. Griffin*, 227 Kan. 332, 336, 607 P.2d 459, 464 (1980); *Kline v. Unified Bd. Comm’rs of Wyandotte Cty./Kansas City*, 277 Kan. 516, 85P.3d 1237 (2004).

<sup>11</sup> A.G. 82-206.

<sup>12</sup> *Clafin v. Walsh*, 212 Kan. 1, 9, 509 P.2d 1130, 1137 (1973).

<sup>13</sup> A.G. 79-26 (citing K.S.A. §§ 79-2925 *et seq.* and 19-2115); *see also* A.G. 96-54 opining the Community Corrections Act is uniform, but counties may establish a fee for program participants.

<sup>14</sup> 191 Kan. 293 at 302 (1963).

<sup>15</sup> *Robert L. Rieke Bldg. v. City of Overland Park*, 232 Kan. 634, 657 P.2d 1121 (1983); *Quinly v. City of Prairie Village*, 446 F. Supp. 2d 1233 (D. Kan. 2006).

<sup>16</sup> K.S.A. § 19-101a(7).

<sup>17</sup> A.G. 74-303.

<sup>18</sup> A.G. 79-182.

<sup>19</sup> K.S.A. § 12-1774.

<sup>20</sup> K.S.A. § 19-101a(10).

## **CHAPTER 5: RESOLUTIONS: PROCEDURE AND FORM**

### **ARTICLE 1: INTRODUCTION**

#### **5.1.1 General**

County commissions enact laws and set policies by passing resolutions. Resolutions are local laws enforceable in district court, similar to the laws the legislature passes.<sup>1</sup> The authority for the commission to enact local laws and policies is K.S.A. § 19-101a. It authorizes counties to “transact all county business and perform all powers of local legislation and administration” deemed appropriate by the Board subject to various limitations and prohibitions. If there is no state statute authorizing a county to take a particular action, it may use its home rule power to pass an ordinary resolution to authorize the action to be taken. To be valid, a resolution must relate to “county business” and be about “local legislation and administration.”<sup>2</sup> Passage of a simple resolution suffices if the local legislation is not “contrary to” any act of the state legislature.<sup>3</sup> If, however, the Board intends to create law in conflict with state legislation, it must enact a charter ordinance. This option is only available if the state law is “not uniformly applicable to all counties.”<sup>4</sup> Counties may not pass resolutions to regulate subject matter on which Kansas has prohibited the exercise of home rule powers.<sup>5</sup>

[Back to top](#)

#### **5.1.2 Types of Resolutions**

Counties have three types of resolutions that can be used to pass legislation:

- (1) Ordinary resolutions;
- (2) Charter resolutions; and
- (3) Administrative resolutions.

[Back to top](#)

#### **5.1.3 Ordinary Resolutions**

Ordinary resolutions are used to enact laws where no state statute exists on the subject and no state law prohibits a county from legislating on the subject. A county can enact local legislation as necessary to transact county business and perform all powers of local legislation deemed appropriate.<sup>6</sup> The resolution becomes effective after it is published in the official county newspaper.<sup>7</sup>

The local legislation cannot conflict with any act of the Kansas legislature, and the subject matter must not encompass a subject that state law exempts from the counties’ home rule powers.<sup>8</sup>

[Back to top](#)



#### **5.1.4 Charter Resolutions**

Charter resolutions may be used to exempt the county from the whole or any part of a law enacted by the Kansas legislature. A charter resolution can only be used to “charter out” of an act that:

- (1) Applies to the county;
- (2) Does not uniformly apply to all counties; and
- (3) Is not on a subject that is prohibited from home rule or statutory exemption (see Section 4.2.1 above for a list of prohibited subjects).

[Back to top](#)

#### **5.1.5 Administrative Resolutions**

Kansas has granted counties broad powers to administer the business of the county in K.S.A. §§ 19-101 and 19-212. Resolutions addressing these duties are administrative resolutions. According to case law, the determination of whether an ordinance is legislative or administrative “is to be based upon the factual situation in each case.”<sup>9</sup> An ordinance that makes new law is legislative; an ordinance that executes an existing law is administrative. Permanency and generality are key features of a legislative ordinance.<sup>10</sup>

Administrative resolutions do not require publication because they are not enacting local legislation; they are merely carrying out duties assigned to counties by the legislature.

[Back to top](#)

### **ARTICLE 2: PROVISIONS APPLICABLE TO ALL RESOLUTIONS**

#### **5.2.1 County Business**

Resolutions must deal with county business. Although counties administer and enforce state laws relating to the conduct of elections, the appraisal and assessment of property, and the licensing and registration of motor vehicles, this fact does not make such functions “county business.” Counties perform these functions as agents or instrumentalities of the state and as directed by state law. For example, a county cannot alter the procedure and regulations set by the state for licensing and registering motor vehicles, since this is exclusively state business.<sup>11</sup>

Similarly, county business does not include interfering with other governmental entities located within the county. “The legislative powers of the county do not extend to the legislative restructuring of the statutory authority and responsibilities of other political subdivisions, such as cities.”<sup>12</sup> For example, a county attempting to unilaterally consolidate law enforcement agencies within the county may run into difficulties. Such action would affect the statutory authority and responsibilities of cities within the county, and as a result no consolidation could occur until the consent of the governing bodies of each city affected had been obtained.<sup>13</sup> Nor may a county carry out a plan to take an annual census, as a census would affect the business of other taxing districts in the county.<sup>14</sup> The county cannot impose additional duties upon a state officer since directing a state officer is not a function of county business.<sup>15</sup> A county may

not add additional tests or requirements for marriage, as marriage is a matter of statewide concern.<sup>16</sup>

Examples of matters considered county business are:

- (1) Operation of a county hospital;<sup>17</sup>
- (2) Emergency services dispatch;
- (3) Prohibiting nepotism;<sup>18</sup> and
- (4) Appointment of county officers and employees.<sup>19</sup>

[Back to top](#)

### **5.2.2 Local Versus Statewide Concern**

The exercise of home rule power is limited to matters of “local legislation.” This means that all regulations must be matters of local and not statewide concern.

There are very few court decisions on this matter. The attorney general, however, has issued many opinions on what constitutes a matter of local concern:

- (1) Acquiring property for an industrial park.<sup>20</sup>
- (2) Issuing industrial revenue bonds.<sup>21</sup>
- (3) Appointment of a county counselor.<sup>22</sup>
- (4) Prohibiting nepotism in hiring.<sup>23</sup>
- (5) A business and occupational licensing code.<sup>24</sup>
- (6) Construction of a medical clinic.<sup>25</sup>
- (7) Investment of idle county funds.<sup>26</sup>
- (8) A county construction code.<sup>27</sup>
- (9) A civil service system within the sheriff’s department.<sup>28</sup>
- (10) The control and eradication of prairie dogs.<sup>29</sup>
- (11) A solid waste authority.<sup>30</sup>
- (12) Expenditures for lobbying purposes.<sup>31</sup>
- (13) The sale of a county home on the installment basis.<sup>32</sup>
- (14) Transferring a county park to a city.<sup>33</sup>
- (15) Regulating lodging establishments.<sup>34</sup>
- (16) Public roads and impact fees.<sup>35</sup>

[Back to top](#)

### **5.2.3 Contrary to, or in Conflict with, State Law**

An ordinary county resolution that is contrary to, or in conflict with, the provisions of a state law is invalid since state law is supreme. It is therefore always necessary to check state law to learn whether there is a state statute or regulation applicable to the county on the subject on which the county proposes to legislate.

Note that state law on the same subject does not necessarily preclude county legislation. State law only bars local legislation if it will conflict with state law. Court decisions and attorney

general's opinions provide guidelines as to when local legislation conflicts with state law. The Kansas Supreme Court has held that there is a conflict between local legislation and state law if the local legislation denies rights granted by state law, or grants rights denied by state law.<sup>36</sup> There is no conflict between local legislation and a legislative act when:

- (1) The local legislation merely supplements or adds to the state law;<sup>37</sup>
- (2) The local legislation merely provides standards of performance higher than those set by state law (e.g., where a county home rule resolution establishes earlier closing hours for private licensed clubs than required by state law). Although recently, courts have viewed these higher performance standards in conflict with state law because they deny rights (by restricting otherwise permissible activities) granted by the state;<sup>38</sup> and
- (3) There is no conflict if the local legislation parallels the state law.<sup>39</sup>

[Back to top](#)

#### **5.2.4 Constitutionality**

Of course, county legislation, like any other legislation, must meet constitutional requirements. One example of a succession constitutional defense occurred when a Kansas county-imposed licensing and regulation requirements on an adult entertainment studio. The Kansas Supreme Court held that the resolution did not violate the right to free speech or equal protection rights. Nor did the resolution permit unreasonable warrantless searches.<sup>40</sup>

[Back to top](#)

#### **5.2.5 Public Purpose**

The Public Purpose Doctrine provides that the government may only spend public funds to further a public purpose. In Kansas, this may even include public funds or property for private individuals if it promotes public welfare.<sup>41</sup> Essentially, if the policy serves a legitimate public purpose, then the funding is acceptable. The Public Purpose Doctrine applies to the Kansas Legislature, but local resolutions and ordinances similarly cannot violate the public policy.

For example, a county may not engage in the commercial sale of asphalt unless it fulfills a public purpose.<sup>42</sup> Further, counties may not use home rule powers to regulate private legal relationships, including private contracts or tort law. Local legislation is restricted to public law as distinguished from private law.

[Back to top](#)

#### **5.2.6 Summary**

To be valid, an ordinary county home rule resolution must:

- (1) Relate to county business;
- (2) Be on a subject of local concern;
- (3) Not be in conflict with state law or public policy;
- (4) Not be on a subject on which county home rule legislation is prohibited; and
- (5) Be constitutional.

[Back to top](#)

## ARTICLE 3: CHARTER RESOLUTIONS

### 5.3.1 Introduction

K.S.A. § 19-101b authorizes counties to pass a charter resolution, and it defines a charter resolution as “a resolution which exempts from the whole or any part of an act of the legislature and which may provide substitute and additional provisions on the same subject.”<sup>43</sup>

A charter resolution may be used to modify a state act only when the state act:

- (1) Applies to the county;
- (2) Does not apply uniformly to all counties or the law has an escape clause; and
- (3) Is not on a subject on which home rule power is prohibited.

A charter resolution may **not** be used by a county to “bring itself under” state law.

A charter resolution can be used when a county does not want to be bound by a non-uniform state law that applies to the county or when a proposed ordinary resolution will conflict with such law. It is used in two ways:

- (1) To exempt from all or part of an act without providing substitute provisions; or
- (2) To exempt from all or part of the act and then, within the charter resolution, provide substitute and additional provisions.

[Back to top](#)

### 5.3.2 Exemption

If a county exempts itself from the state without providing substitute provisions, the effect is to “repeal” the state act (or part of it) as it applies to the county. The county is then free to legislate on the same subject by ordinary resolution. There can be no conflict with the state law, as it no longer applies to the county.

The charter resolution must specifically designate the legislative act (or part of it) to be made inapplicable to the county. A “part” of a statute is a section or subsection and not the words, sentences or paragraphs contained in a section or subsection. Even if the intent is to only exempt from certain provisions in a section or subsection, the county should exempt itself from the *entire* section or subsection. The county must then restate the desired provisions from the section in the charter resolution. An example would be exempting the county from sections of the Consolidated Law Enforcement Act if the section is not uniformly applicable or there is an expressed exception.<sup>44</sup>

[Back to top](#)

### 5.3.3 Substitute Provisions

If the county proposes substitute provisions, the charter resolution must first exempt itself from the act before proposing substitute provisions. If exemption is not made, the state law

continues to apply and the substitute provisions will be in conflict with state law, thus invalidating the charter resolution. As an example, the charter resolution may state:

“The County of \_\_\_\_\_ by the power vested in it by K.S.A. § 19-101a hereby elects to exempt itself from K.S.A. § \_\_\_\_\_ and subsection (\_\_\_\_) of K.S.A. § \_\_\_\_\_ and hereby provides substitute and additional provisions as hereinafter set forth.”

The county should generally not place substitute provisions in a charter resolution when the subject of the resolution is one on which changes will likely be made over time. The better practice is to exempt entirely from the state act and then provide in the charter resolution that substitute provision will be adopted by ordinary resolution. It is much easier to amend an ordinary resolution than it is to amend a charter resolution.<sup>45</sup>

[Back to top](#)

#### **5.3.4 Additional Provisions Not in Conflict with State Law**

Additional provisions may be included with substitute provisions in the charter resolution. When the sole purpose of the proposed legislation is to provide additional provisions on a subject covered by a state act, a charter resolution is not necessary. The additional or supplementary matter may be provided by ordinary resolution if that matter does not conflict with state law. The fact that the state act applies uniformly to all counties does not preclude additional legislation by ordinary resolution unless the uniformly applicable state law contains language expressly prohibiting local legislation on the same subject.<sup>46</sup>

[Back to top](#)

#### **5.3.5 Repeal or Amendment of a Charter Resolution**

The Board may amend or repeal a charter resolution *only* by passing another charter resolution. If the legislature amends the state act to make it uniformly applicable to all counties and the prior act was exempted by a charter resolution, the charter resolution has been effectively repealed. A repeal of a state act does not affect the continuing validity of a charter resolution that exempts from or modifies the provisions of the state act. If the legislature amends the home rule statute to prohibit use of a charter resolution or provides substitute provisions for a specific statute, the effect would repeal any charter resolution affecting such statutes.<sup>47</sup>

[Back to top](#)

### **ARTICLE 4: ORDINARY RESOLUTIONS: PROCEDURE AND FORM**

#### **5.4.1 Numbering**

Although not required by statute, it is wise to number all resolutions consecutively and maintain the laws in an official resolution book. This procedure is required by statute for city ordinances, and it serves to organize and understand the laws regulating county affairs.

[Back to top](#)

### **5.4.2 Subject and Title**

An ordinary county resolution should not contain more than one subject in the title of the resolution. Though this is not a statutory requirement, the single-subject approach is important to help counties pass clear and thoughtful laws. This is different from cities, which must clearly express a single-subject title based on statutory requirement.<sup>48</sup>

[Back to top](#)

### **5.4.3 Resolving Clause**

Although not required by statute, an ordinary resolution is a legislative act and should have a resolving clause such as, “The Board of \_\_\_\_\_ resolves to adopt the following resolution<sup>1</sup>.”

[Back to top](#)

### **5.4.4 Body**

The body of the resolution contains the command or law ordained by the Board and is the most important part of the resolution. KAC recommends breaking down the body into sections. Like the single-subject approach to lawmaking, the sections help organize and clarify the law, while simplifying later amendments to the resolution. If the resolution is later amended, the county must publish the amended section or sections.

[Back to top](#)

### **5.4.5 Penalty**

The penalty section should appear at the end of the resolution. K.S.A. § 19-101d gives the Board the authority to enforce all resolutions passed under home rule powers. Penalties include fine and confinement in the county jail.<sup>49</sup>

[Back to top](#)

### **5.4.6 Source of Authority**

It is recommended that the resolution state whether it was passed pursuant to a specific statute or the home rule powers granted or under a specific home rule power. A person examining the resolution will then be able to ascertain the source of authority for its passage.

[Back to top](#)

### **5.4.7 Vote**

A home rule ordinary resolution, like any other resolution, must be adopted by a majority vote of the members of the Board.

[Back to top](#)

---

<sup>1</sup> Note that KAC has historically advanced the lead sentence of ““Be it resolved by the Board of County Commissioners of \_\_\_\_\_ County that the following resolution be adopted.” This change is to promote a plain-English approach to law, so laws are accessible and understandable.

#### **5.4.8 Effective Date**

Although an ordinary resolution becomes effective upon publication in the official county newspaper, the resolution itself may provide for a deferred effective date.

[Back to top](#)

### **ARTICLE 5: CHARTER RESOLUTIONS: PROCEDURE AND FORM**

#### **5.5.1 Vote**

In counties with three commissioners, charter ordinances require a unanimous vote. All Board members must vote affirmatively for the charter resolution if it is not submitted to a direct referendum. A two-thirds vote is sufficient if, before passage, the Board decides that the charter resolution will go to a referendum. In counties with five or seven commissioners, a two-thirds vote is required to pass a charter resolution or a majority vote if the charter resolution is to be submitted to a referendum. The vote by which the charter resolution was adopted should be noted at the end of the charter resolution.<sup>50</sup>

[Back to top](#)

#### **5.5.2 Referendum**

If the Board does not submit a charter resolution to a direct referendum, the electors have 60 days after final publication in which to file a petition demanding that the charter resolution be submitted to a vote.<sup>51</sup>

[Back to top](#)

#### **5.5.3 Petition**

There are two requirements for the petition.

- (1) The petition must be filed in the office of the county election officer.
- (2) The petition must be signed by the greater of:
  - a. 2 percent of the number of electors who voted at the last preceding November general election; *or*
  - b. 100 electors.<sup>52</sup>

[Back to top](#)

#### **5.5.4 Sufficiency of the Petition**

Before circulation to the public, the state requires a determination on whether the petition meets legal requirements and that there are sufficient signatures. The sufficiency of a petition is decided by the county election officer who is either the election commissioner or the county clerk.<sup>53</sup>

[Back to top](#)

### **5.5.5 Resolution Calling an Election**

A referendum may be held either upon the Board's initiative, or in response to the filing of a sufficient petition. The Board must call the election by passing a resolution that must be published once each week for three consecutive weeks in the official county newspaper. This resolution must state the election date and must contain the title of the charter resolution. The proposition must be: "Shall charter resolution No. \_\_\_\_ entitled (title of resolution) take effect?"<sup>54</sup>

If a charter resolution is submitted for election after receipt of a petition, the county must call the election within 30 days and hold it within 90 days after filing of the petition.<sup>55</sup> The election is conducted in the same manner as elections for county officers.

[Back to top](#)

### **5.5.6 Referendum Not Mandatory**

The Board is not required by statute to call a referendum upon receipt of a sufficient and timely petition. If the Board decides not to call a referendum, the proposed charter resolution is abandoned and expires by operation of law. Although no formal action is necessary, Board action rescinding the proposed charter resolution is appropriate. The fact that the Board abandons a charter resolution after receipt of a timely and sufficient petition does not prevent the Board from subsequently adopting the same charter resolution.<sup>56</sup>

[Back to top](#)

### **5.5.7 Election Not Mandatory**

The attorney general has opined that a petition filed within sixty days of the final publication of a charter ordinance does not mandate a city to call an election. Failure to call an election makes the ordinance ineffective, meaning the charter ordinance will not go into effect without an election.<sup>57</sup> This rule applies to charter resolutions initiated by county Boards. K.S.A. § 19-101b(c) states in part:

"[i]f within 60 days of the final publication of a charter resolution, a petition signed by a number of electors of a county equal to not less than 2% of the number of electors who voted at the last preceding November general election or 100 electors (whichever is the greater) shall be filed in the office of the county election officer demanding that such resolution be submitted to a vote of the electors, it shall not take effect until submitted to a referendum and approved by the electors. An election, if called, shall be called within 30 days and held within 90 days after the filing of the petition. The Board, by resolution, shall call the election and fix the date. . ."

[Back to top](#)



### **5.5.8 Petition Unnecessary for Referendum**

The Board may submit any charter resolution for a referendum without petition in the same manner that charter resolutions are submitted on petition. The only difference is that the county must call the election within 30 days and hold it within 90 days after the first publication of the charter resolution.<sup>58</sup>

[Back to top](#)

### **5.5.9 Recording the Charter Resolution**

If a charter resolution becomes effective, the county election officer records it in a book used expressly for recording charter resolutions. The recording must contain a statement of the manner of adoption, which may be placed at the end of the charter resolution.<sup>59</sup> It should state whether the charter resolution was adopted without referendum, by petition and referendum, or by direct referendum.

[Back to top](#)

### **5.5.10 Filing with the Secretary of State**

The county must file a certified copy of each charter resolution with the office of the Secretary of State, which maintains an index of charter resolutions.<sup>60</sup> The home rule statute does not state whether the validity of the charter resolution is affected by a failure to file. The Secretary of State's office requests that the charter resolution be an original.

[Back to top](#)

### **5.5.11 Number**

The county should assign a number to each charter resolution. KAC recommends beginning with "Charter Resolution No 1" listing each subsequent charter resolution in numerical order. Ordinary resolutions should be numbered and kept separately.

[Back to top](#)

### **5.5.12 Title**

A title is required.<sup>61</sup> If a charter resolution is submitted to a referendum the proposition must contain the title of the charter resolution.

If a county exempts itself from an act without providing substitute provisions, the general form is:

"A charter resolution exempting \_\_\_\_\_ County from K.S.A. § \_\_\_\_\_ and any act amendatory thereof."

If a county adds substitute or additional provisions, the general form is:

"A charter resolution exempting \_\_\_\_\_ County from K.S.A. § \_\_\_\_\_ and any act amendatory thereof and providing substitute and additional provisions on the same subject."

### **5.5.13 Resolving Clause**

The statute does not require a resolving clause. However, KAC recommends using the following resolving clause: “The Board of Commissioners of \_\_\_\_\_ County resolves to adopt the following Charter Resolution.”

[Back to top](#)

### **5.5.14 Body**

The body of the resolution must specifically designate the state legislative act or part of the act made inapplicable to the county by passage of the charter resolution. The body should also include any substitute and additional provisions.<sup>62</sup>

[Back to top](#)

### **5.5.15 Effective Date**

If the county submits a charter resolution to a referendum, it takes effect when approved by the electors. If a charter resolution is not submitted to a referendum, the statute says it shall take effect 60 days after final publication. This 60-day period is designed to give the electors an opportunity to petition for a referendum on the question of whether the county should adopt the charter resolution. Since the charter resolution does not take effect until 60 days after publication, it actually does not take effect until the 61<sup>st</sup> day since the last day of publication is not counted.<sup>63</sup>

The last section of the charter resolution should state the effective date. Thus, if the charter resolution is not to be submitted to a referendum, the following language may be used:

“Sec. \_\_\_\_\_. This charter resolution shall take effect 60 days after final publication unless a sufficient petition for a referendum is filed and a referendum held on the resolution as provided by K.S.A. § 19-101b, in which case the resolution shall become effective if approved by a majority of the electors voting thereon.”

If the charter resolution is submitted to a referendum, the statement is: “This charter resolution shall take effect when approved by a majority of the electors voting thereon.”

[Back to top](#)

### **5.5.16 Publication**

It is customary, although not required, to state in a section at the end of the charter resolution that the charter resolution will be published once each week for two consecutive weeks in the official county newspaper.

[Back to top](#)

## **ARTICLE 6: ADMINISTRATIVE RESOLUTIONS**

### **5.6.1 Corporate and Administrative Powers**

The State has granted counties broad powers to administer the business of the county. K.S.A. § 19-101 sets out the corporate powers of counties and K.S.A. § 19-212 sets out various administrative powers. For example, counties have the power “to make all contracts and do all other acts in relation to the property and concerns of the county, necessary to the exercise of its corporate or administrative powers.”<sup>64</sup> Where law makes no other provision, the Board has the power “to represent the county and have the care of the county property, and the management of the business of the county.”<sup>65</sup>

The attorney general applied the broad language of K.S.A. § 19-212 to empower a county to adopt a Personnel Policies and Procedures manual by resolution.<sup>66</sup>

[Back to top](#)

### **5.6.2 Appropriate Uses for Administrative Resolutions**

Counties should create administrative resolutions to set internal policies, procedures, ongoing operational matters, approval of contracts, interlocal agreements, and recurring subjects such as the annual budget.

As noted above, administrative resolutions do not require publication as they are not legislative in nature, and will not be enforced in the county court, so no notice is required. Because they are administrative in nature, they are not subject to referendum. Some administrative matters, such as the annual budget, have their own publication and hearing requirements given in statute.

[Back to top](#)

### **5.6.3 Form and Procedure**

The form and procedure for an administrative resolution is the same as the ordinary resolution with the exception that there is no penalty provision, and they are not published. Please see Article 6 for a detailed discussion of the appropriate form.

[Back to top](#)

## CHAPTER 5 ENDNOTES

---

<sup>1</sup> K.S.A. § 19-101d.

<sup>2</sup> K.S.A. § 19-101a(a).

<sup>3</sup> K.S.A. § 19-101a(b).

<sup>4</sup> K.S.A. § 19-101a(b).

<sup>5</sup> K.S.A. § 19-101a(c).

<sup>6</sup> K.S.A. § 19-101a(b).

<sup>7</sup> K.S.A. § 19-101a(b).

<sup>8</sup> K.S.A. § 19-101a(b).

<sup>9</sup> *Rauh v. City of Hutchinson*, 223 Kan. 514, 519, 575 P.2d 517, 522 (1978).

<sup>10</sup> *City of Lawrence v. McArdele*, 214 Kan. 862, 522 P.2d 420 (1974), *see also City of Topeka v. Imming*, 51 Kan.App.3d 247, 257, 344 P.3d 957, 964 (2015).

<sup>11</sup> A.G. 80-88.

<sup>12</sup> A.G. 78-269. However, the Consolidated Law Enforcement Act is non-uniform, and a county may alter some of its provisions once it is appropriately adopted. *See* A.G. 2003-9.

<sup>13</sup> K.S.A. § 19-101a(a)(4).

<sup>14</sup> A.G. 81-112.

<sup>15</sup> A.G. 77-234.

<sup>16</sup> A.G. 81-286.

<sup>17</sup> A.G. 81-37.

<sup>18</sup> A.G. 80-264. Note that endnotes 18 and 19 refer to opinions about legislation repealed with the enactment of the Kansas 911 Act.

<sup>19</sup> A.G. 78-51. Note that endnotes 18 and 19 refer to opinions about legislation repealed with the enactment of the Kansas 911 Act.

<sup>20</sup> A.G. 86-40.

<sup>21</sup> A.G. 79-141.

<sup>22</sup> A.G. 85-41.

<sup>23</sup> A.G. 80-264.

<sup>24</sup> A.G. 76-76.

<sup>25</sup> A.G. 79-47.

<sup>26</sup> A.G. 75-388.

<sup>27</sup> A.G. 74-275.

<sup>28</sup> A.G. 74-339.

<sup>29</sup> A.G. 77-392.

<sup>30</sup> A.G. 75-205.

<sup>31</sup> A.G. 81-208.

<sup>32</sup> A.G. 76-298.

<sup>33</sup> A.G. 95-44.

<sup>34</sup> A.G. 2010-7.

<sup>35</sup> A.G. 2006-17.

<sup>36</sup> *David v. Norton Cty. Comm'rs*, 277 Kan. 753, 759, 89 P.3d 893 (2004).

<sup>37</sup> *Kline v. Unified Gov't of Wyandotte Cty.*, 277 Kan. 516, 520, 85 P.3d 1237, 1241 (2004).

<sup>38</sup> *Leavenworth Club Owners Ass'n v. Atchison*, 208 Kan. 318, 492 P.2d 183 (1971); *but see David v. Norton County Comm'rs*, 277 Kan. 753, 754, 89 P.3d 893 (2004).

<sup>39</sup> *City of Garden City v. Miller*, 181 Kan. 360, 311 P.2d 306 (1957).

<sup>40</sup> *Moody v. Shawnee Cty. Comm'rs*, 237 Kan. 67, 697 P.2d 1310 (1985).

<sup>41</sup> *Ullrich v. Board of Cty. Comm'rs of Thomas Cty.*, 234 Kan. 782, 788-89, 676 P.2d 127 (1984).

<sup>42</sup> K.S.A. § 12-16,122; A.G. 97-67.

<sup>43</sup> K.S.A. § 19-101b(b).

<sup>44</sup> A.G. 2003-9.

---

<sup>45</sup> See *Farha v. City of Wichita*, 284 Kan. 507, 161 P.3d 717 (2007) (affirming that a city may update items referenced in a charter ordinance by ordinary ordinance).

<sup>46</sup> A.G. 85-90, 90-107, 2000-14.

<sup>47</sup> K.S.A. § 19-101b(d).

<sup>48</sup> K.S.A. § 12-3004.

<sup>49</sup> K.S.A. § 19-101d and § K.S.A. 19-101e should be consulted for limitations on imposing penalties and procedure for prosecution.

<sup>50</sup> K.S.A. § 19-101b.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> K.S.A. §§ 25-3601, 25-2303.

<sup>54</sup> K.S.A. § 19-101c.

<sup>55</sup> *Id.*

<sup>56</sup> A.G. 75-375.

<sup>57</sup> A.G. 94-103.

<sup>58</sup> K.S.A. § 19-101b.

<sup>59</sup> K.S.A. § 19-101b(c).

<sup>60</sup> *Id.*

<sup>61</sup> K.S.A. § 19-101b(b).

<sup>62</sup> K.S.A. § 19-101b.

<sup>63</sup> *Id.*

<sup>64</sup> K.S.A. § 19-101 (fourth).

<sup>65</sup> K.S.A. § 19-212 (sixth).

<sup>66</sup> A.G. 93-64.

## CHAPTER 6: MEETINGS GENERALLY

### ARTICLE 1. INTRODUCTION

The central job of a county commissioner is to allocate public resources, e.g., tax funds, personnel, facilities, and equipment in a manner beneficial to county residents. Under state law, commissioners may only exercise their power to allocate resources through an official meeting of the Board. Individual commissioners have no more legal authority to make decisions than a private citizen, and meetings are the only avenue for commissioners to exercise the *collective power* of the Board.

As public officials, commissioners must be vigilant in assuring that Board meetings conform to state law. However, a *legally compliant* Board meeting does not guarantee an effective and democratically responsive meeting. Thus, in the public sector, governing bodies must also give attention to three other criteria related to their official meetings:

- **Results** – do the official decisions made at meetings produce outcomes that meet short *and* long-term county needs?
- **Process** – does that Board make decisions in a deliberative, efficient, and ethical manner in a way that promotes healthy citizen participation?
- **Public Image** – does the Board conduct itself in a setting and in such a manner as to earn public respect and create a positive public image?

#### 6.1.1 Governing Body Defined

While most state laws refer to the “Board of County Commissioners,” some refer to the “governing body.” The term “governing body” is also used in statutes that apply to cities and other governmental units. For the purposes of this publication, governing body or board means the Board of County Commissioners.

[Back to top](#)

#### 6.1.2 Meeting Powers of the County Board

The governing body holds the basic powers of counties, and a governing body does not legally exist except in an official meeting. When the Board is not in session, the individual members have no more legal authority than private citizens.<sup>1</sup> Any power they can lawfully exercise, as a Board, must be delegated. The ultimate authority is in the governing body of the county as it meets.

K.S.A. § 19-212 provides that at any meeting the Board shall have the following powers:

- (1) To make such orders concerning the property belonging to the county as they may deem expedient, including the establishing of regulations, by resolution, as to the use of such property and to prescribe penalties for violations thereof.
- (2) To examine and settle all accounts of the receipts and expenses of the county, and to examine and settle and allow all accounts chargeable against the county; and when so settled, they may issue county orders therefore, as provided by law.
- (3) To purchase sites for and to build and keep in repair county buildings and cause the same to be insured in the name of the county treasurer for the benefit of the county; and in case there are no county buildings, to provide suitable rooms for county purposes.
- (4) To purchase an existing building and the site upon which it is located for the purpose of providing additional space for county offices and to remodel and equip the same.
- (5) Apportion and order the levying of taxes as provided by law.
- (6) To represent the county and take care of the county property, and the management of the business and concerns of the county, in all cases where no other provision is made by law.
- (7) To set off, organize, and change the boundaries of townships in their respective counties, to designate and give names therefore, and to appoint township officers for such new townships which officers shall serve until the next general election; to fix time and place of holding the first election therein.
- (8) To establish one or more election precincts in any township, as the convenience of the inhabitants thereof may require.
- (9) To lay out, alter, or discontinue any road running through one or more townships in such county, and also to perform such other duties respecting roads as may be provided by law.
- (10) To enter into contracts with any landowners for the construction and maintenance of underpasses, bridges, and drainage ways under and across any county road in connection with the locating, opening, laying out, construction, or alteration of any county road running across or through such landowner's land, whenever in the judgment of the Board such contract is to the best interests of the county. Any such contract entered into by the Board shall be binding upon subsequent Boards and shall not be terminated without the written consent of said landowner or his heirs or assigns.
- (11) To contract for the protection and promotion of the public health and welfare.
- (12) To acquire, own, and operate a county airport.
- (13) To perform such other duties as are or may be prescribed by law.

[Back to top](#)

### **6.1.3 Notices and the Agenda**

The county must give notice of the date, time, and place of a regular or special meeting to anyone requesting the information. Whenever an agenda is prepared, it must be made available to any person requesting it prior to the meeting.<sup>2</sup>

[Back to top](#)

### **6.1.4 Hours of Meeting**

There is no statute that fixes the time for the Board's regular meetings. This is a matter for the Board to determine and set in the resolution governing Board meetings.

[Back to top](#)

### **6.1.5 Locations of Meetings**

The meetings of the Board must be held at the county seat.<sup>3</sup> However, this is a non-uniform statute, and the Board may pass a charter resolution to charter out of the state law and designate an alternative meeting location. For some counties, having meetings in different communities in the county may bring visibility to county operations and present an opportunity for citizens to meet the commissioners and key staff members. Whenever the meeting is not held at the usual site, the Board should take reasonable steps to ensure that the public is aware of the change in location. For safety reasons, the Board should note that concealed carry of weapons may only be prohibited by them on county properties.<sup>4</sup>

The county should also ensure that the meeting location is fully accessible according to the Americans with Disabilities Act (ADA). KAC recommends setting up a regular meeting site with adequate space for commissioners, the county clerk, staff, media, and citizens who may wish to attend.

[Back to top](#)

### **6.1.6 Board Sits with Open Doors**

By law, the Board is required to sit with open doors.<sup>5</sup> This means that Board meetings must always be open to the public and may not be conducted in secrecy—except when meeting in executive session as defined in K.S.A. § 75-4319.<sup>6</sup> County commissioners must ensure public accessibility to the Board's meetings. Indicators of the Board's conformance to the spirit of the Kansas Open Meetings Act include: broad distribution and lead time of public notices, cooperation with media, clarity of the agenda, and provisions for citizen participation.

[Back to top](#)

### **6.1.7 Frequency of Meetings**

The frequency of county commission meetings varies from county to county. In counties having a population of more than 50,000 residents, the Board is required to meet not less than twice each week.<sup>7</sup> Boards in counties with a population of less than 50,000 residents are required to meet in regular session, "as established by resolution adopted by the Board", to act on claims and other county business.<sup>8</sup> It would appear that in these counties there should be a resolution



fixing the regular meeting date. A similar resolution should be passed in counties of more than 50,000 fixing the days of each week set aside for regular meetings. These statutes are non-uniform and therefore subject to modification by county home rule powers.

[Back to top](#)

### **6.1.8 Duties of the Chairman of the Board**

The chairman of the Board presides at the meetings of the Board.<sup>9</sup> Being one of the members of the Board, he or she votes as any other member and is at liberty to take part in discussions, to make motions, to second motions where necessary, and otherwise take part in the proceedings. The chair has power to administer oaths to any person concerning any matter submitted to the Board or connected with the power and duties of the Board.<sup>10</sup> The chair signs all county orders (warrants—*see Chapter 10*) and all bonds of indebtedness issued by the county. This may be done by facsimile signature.

Additionally, the commission chair is also expected to serve as the *process* leader for the work of the Board. In this role, the chair has responsibility to:

- Assure that meetings begin and end on time;
- Provide leadership in the use of meetings procedural rules;<sup>11</sup>
- Help the Board exercise disciplined discussions that are relevant and appropriate to the agenda;
- Encourage constructive deliberation among commissioners;
- Welcome and provide guidance for citizens who wish to address the Board; and
- Model and enforce the Board's decorum.

[Back to top](#)

### **6.1.9 Staff Personnel at Meetings**

Every county has a county clerk, who, in addition to his or her regular administrative duties, is secretary or clerk of the governing body. The county clerk is required to attend the sessions of the Board, either in person or by deputy.<sup>12</sup> K.S.A. § 19-305 provides the clerk's recording duties. In large counties where the Board meets often, the Board may employ a secretary who devotes time to the Board's business and who attends the meetings and takes the notes for the journal. The county clerk should deputize the secretary as a deputy clerk to comply with the statute. Sometimes neither the clerk nor a deputy is present during all of a meeting and a member of the Board—usually the chair—keeps notes of actions taken. The chair then informs the clerk of what happened. The clerk calls the roll, keeps minutes (or a journal), assists the chair in seeing that the governing body keeps to the regular order of business, and reads the minutes, correspondence, reports, papers, claims, and resolutions at the appropriate time. By having these items in convenient order, the county clerk helps facilitate procedure. Some counties have a deadline for creditors to submit claims for consideration by the Board, which is another procedural step for the Board to follow.

The county attorney or counselor may be required to attend meetings to give advice on legal questions and claims. Among other county officers offering staff assistance during meetings is the engineer or director of public works. When a public-works contract is pending, a consulting engineer may be present. A representative from the planning and zoning commission may also be in attendance.

[Back to top](#)

#### **6.1.10 Rules and Regulations**

K.S.A. § 19-218 authorizes the Board to establish rules and regulations to expedite its business. It is important that the Board establish some rules governing Board matters. This is especially important where the Board works from a formal agenda. Rules can govern the time and manner of placing matters on the agenda, rules of decorum in presenting matters, and more. The rules need not be long or complicated. They may be little more than an order of business. Boards should also write down their rules rather than following custom.

[Back to top](#)

#### **6.1.11 Public Comment**

There is no law that requires the Board to devote a portion of the meeting to hearing from all interested parties to every item of business. Further, there is no requirement that the meeting be open for the purpose of hearing from members of the public on topics not on the agenda. That said, KAC advises counties to set rules that allow interested parties to speak. By setting thoughtful rules on the opportunity for public comment, the governing body can limit instances of off-topic speech. This is an especially important consideration when malicious individuals frequently disrupt meetings.

[Back to top](#)

#### **6.1.12 Agenda/Order of Business**

An agenda is a statement of the order in which items of business will be considered during a meeting. Simply stated, the agenda represents agreement about what the Board will discuss. Chapter 7 offers a sample agenda, but many models are available, each with its own strengths. Consider the example of public comment. Some agendas solicit public comment at the beginning of the meeting; others invite public comment only when the Board considers individual items. The Board should write clear details regarding agenda items, so citizens and the commissioners understand the items set for consideration.

Much of the responsibility for managing the agenda falls to the chair of the Board, but all commissioners share responsibility to make sure their work is focused on the agenda. The Board's agenda provides the structure and framework for its decisions about how to contribute to the future of the community—an important tool to set the Board's public policy priorities. Seen in this light, it is clear that the Board cannot delegate creation of the agenda. Creation of

the agenda is the Board's responsibility and helps ensure the Board's limited time can be directed toward its most important goals.

Once the Board has expressed its preferences for the structure and content of its agendas, the Board can delegate much of the individual agenda construction to the county clerk or staff. Other elected officials and staff can request time on the agenda, but the Board should have guidelines to manage such requests in light of the available meeting time.

A final consideration about the use of an agenda is how well the Board uses the agenda to guide its actions. Amendments to the agenda should be added only by a vote of the Board; in fact, some counties require an extraordinary vote to change the agenda. Counties should treat the agenda process with care to ensure the board business is as productive as possible.

[Back to top](#)

### **6.1.13 Yearly and Monthly Calendars**

Since the Board Commissioners often have other obligations, including seats on other governing bodies, it is advisable for the county clerk to prepare yearly and monthly calendars for the commissioners.

[Back to top](#)

### **6.1.14 Suggestions for Expediting Meetings**

- (1) The Board should review the powers, duties, organization, and functions of the governing body after the county election and when new officers assemble for the first time.
- (2) The Board should prepare a calendar work sheet for the year, which gives the meeting times and outlines the special business coming up at certain times of the year.
- (3) In advance of each meeting, the Board should prepare an agenda and distribute it to Board members along with other appropriate papers and memoranda.
- (4) The Board should begin the meeting on time and stick to a time schedule so far as possible.
- (5) The Board should use the basic order of business.
- (6) The Board should not permit extended discussion of any matter without a motion.
- (7) In some counties, a special consent agenda is used whereby a single motion may approve routine matters.
- (8) The clerk should supply copies of the minutes to the Board prior to the next regular meeting.
- (9) The Board should delegate as much work as possible to committees or officers for consideration and recommendation.
- (10) The Board should concentrate on policy matters, not on administrative details.
- (11) The Board should make clear to individuals who appear before the governing body the amount of time they are allowed for presentation.

- (12) The Board should maintain some formality and decorum that is appropriate for an official governing body meeting—informal procedures usually take more time!
- (13) The Board should adopt written rules and procedures for conducting meetings.
- (14) All discussions should focus on ideas, not the people offering the ideas. This helps ensure meeting productivity, while avoiding unimportant issues.

[Back to top](#)

#### **6.1.15 What the Minutes Should Show—a Record of the Business**

The Board conducts public business and action, which can only be taken as a Board at regular or special meetings. The record should show where the Board met, such as “the Board met in the commission room” or “at the courthouse of the county seat.” Usually, the meeting is held at the courthouse. Although the county clerk or their deputy prepares the minutes, the content of the minutes are subject to the approval of the commissioners.<sup>13</sup>

- (1) Regular Meeting – If the meeting is a regular meeting, the record should show the time, date, and that it was a regular meeting. Kansas law does not state the hour at which regular meetings should begin. The Board should fix the hour of regular meetings by motion or resolution. The record should show the time when the meeting convened.
- (2) Special Meeting – If the meeting is a special meeting, the record should clearly show everything necessary to support a legal meeting. The record should include:
  - a. Confirmation that a quorum requested the meeting;
  - b. Confirmation that the chair called the meeting;
  - c. Confirmation that all the commissioners had sufficient notice or that the absent commissioner was unable to be reached or could not have come if notified;
  - d. Whether the call was for general business or special business; and
  - e. A description of the matters at issue in the call, since any action taken on matters not covered by the call is void.
- (3) Adjourned Meetings – Adjourned meeting records should show that the meeting was an adjournment of a regular or special meeting. This should be consistent with the record of adjournment of the previous meeting. If a regular meeting is adjourned to a later date, such date should be stated. An adjournment “until the call of the chairman” is improper.
- (4) Evidence of a Quorum – The record should list the names of the commissioners present to provide evidence of a quorum. No business can be transacted unless a quorum is present and then only if at least two votes for or against any question. If one commissioner arrives after the other two have been conducting business, the record should state at what stage of the proceedings the commissioner arrived.

- (5) Approval of the Minutes – The record should also indicate whether the Board approved the minutes of the prior meeting. The minutes, or record of proceedings, show the final actions taken by the Board.
- (6) Motions – According to strict parliamentary procedure, matters are not discussed until there is a motion, but in practice many matters are brought up informally and thoroughly discussed before a motion is made.

The practice of seconding motions is still used by most legislative bodies. Since there is no statute on the subject, local resolutions may set forth a procedure or local custom. If there is a motion and a vote taken, there is an assumption of a second motion. Action must be taken by a majority of the Board.

- (7) Recording Votes – There is no statutory requirement that the record lists the name of the mover or the name of the second. The listed vote requirement only exists when a member specifically requests it, or when otherwise required by another statute. K.S.A. § 19-305 provides that the clerk shall record, in a book provided for that purpose, all proceedings of the Board and to record the vote of each commissioner on any question submitted to the Board, if requested by any member. Regardless of the statute, it is common to always list the vote by name.<sup>14</sup>

[Back to top](#)

#### **6.1.16 Ten Ways to Increase the Effectiveness of Board Meetings**

- (1) Make arrangements for commissioners to receive the agenda and supporting materials at least three days in advance of the meeting so they can prepare to participate in the meeting. Effective commissioners spend as much time preparing for meetings as participating in them.
- (2) Determine what kind of information the Board requires to make decisions about agenda items and direct staff to provide this information with the agenda packet.
- (3) Exercise leadership in developing the agenda. Plan and order agenda items with consideration of criteria such as Board priorities, wise management of deadlines, level of public interest in certain items, and the stamina of commissioners. For example, place more complex and important items early in the agenda when people have more energy and try to avoid placing more than one contentious issue at a time on the agenda.
- (4) Give special attention to the details of the meeting room. Conditions such as lighting, temperature, arrangement of chairs, and location of staff definitely influence the way people behave. *A good meeting room doesn't guarantee an effective meeting, but a bad meeting room can contribute to an ineffective meeting.*
- (5) Insist that professional staff and consultants communicate with a lay audience in mind by using jargon-free, user-friendly English.

- (6) Set time limits for regular and special meetings and assume responsibility to honor the time limits. Groups that do not set time limits for meetings tend to be less focused and stray more from the agenda.
- (7) Provide the commission chair with permission and support to manage the flow of business so that the Board can complete the agenda in the allotted time.
- (8) Model the courtesy and respect you wish from the public in your interactions with fellow commissioners, elected officials, and county staff. For example, even if on a first name basis with your fellow commissioners, address each other during meetings using titles, e.g., *Commissioner Smith* or *Chairman Jones*.
- (9) Guard against the clean desk syndrome. As a way of delaying or avoiding the large and difficult issues that face their communities, Boards may be tempted to fill time with minor administrative tasks and lengthy staff reports. The Board's desk may be clean at the end of each meeting, but this accomplishes little in achieving the big picture needs of the county citizens.
- (10) Set aside time at least once a year for the Board to evaluate its skill in managing meetings and conducting its affairs. Many Boards find it beneficial to examine their effectiveness in a retreat setting. The Board could conduct its self-evaluation with the criteria identified at the beginning of this chapter: (1) what are results of the Board's meetings; (2) how well do the meeting processes work; and (3) what kind of public image have the Board's meetings created?

[Back to top](#)

## CHAPTER 6 ENDNOTES

---

<sup>1</sup> A.G. 94-121.

<sup>2</sup> K.S.A. § 75-4318.

<sup>3</sup> K.S.A. § 19-206.

<sup>4</sup> K.S.A. § 75-7c10.

<sup>5</sup> K.S.A. § 19-218.

<sup>6</sup> *Stephen v. Sedgwick County Comm'rs*, 244 Kan. 536, 539, 770 P.2d 455,458 (1989).

<sup>7</sup> K.S.A. § 19-209.

<sup>8</sup> K.S.A. § 19-206.

<sup>9</sup> K.S.A. § 19-219.

<sup>10</sup> K.S.A. § 19-220.

<sup>11</sup> KAC recommends working from Rosenberg's Rules of Order, which is geared toward city and county governing bodies. It is available at [https://www.cacities.org/Resources/Open-Government/RosenbergText\\_2011.aspx](https://www.cacities.org/Resources/Open-Government/RosenbergText_2011.aspx).

<sup>12</sup> K.S.A. § 19-304.

<sup>13</sup> A.G. 2006-1.

## CHAPTER 7: MEETING RULES OF ORDER

### 7.1.1 Introduction

The official meetings of the Board provide the only setting for the execution of the Board's authority. Because of the significance of the business transacted in the course of a commission meeting, it is important that the Board adopt and follow certain rules of procedure in order to expedite its work in an orderly and proper manner.

Kansas statutes are silent as to rules of order or parliamentary procedure for a county commission meeting. In a few cases, the statutes call for resolutions which require the vote to be taken by "yeas" and "nays," and entered in the minutes by the county clerk.

Some county commissions have written rules of order enacted by resolution, while others follow unwritten customs or practices. Other commissions have adopted standard work on parliamentary procedure such as *Roberts' Rules of Order* or *Sturgis Standard Code of Parliamentary Procedure*. The League of Kansas Municipalities publication "Code of Procedure for Effective Meetings, 2006" is another option instead of *Roberts Rules of Order*. It is a streamlined and Kansas-specific book of procedures. The publication is available for purchase at: <http://www.lkm.org/publications>.

KAC recommends following *Rosenberg's Rules of Order*, a free publication available through the League of California Cities:

<https://www.cacities.org/UploadedFiles/LeagueInternet/77/77d4ee2b-c0bc-4ec2-881b-42ccdbbe73c9.pdf>. <sup>1</sup> Dave Rosenberg has served as a state judge since 2003. He has also served as a county supervisor and city councilmember. He published *Rosenberg's Rules* specifically for local officials who function with small governing bodies. This publication is similar to *Robert's* but is much more accessible due to its streamlined nature.

[Back to top](#)

### 7.1.2 Order of Business

The commission should have a written agenda that prioritizes the county's business at its meeting. The following is an example of an order of business:

1. Call to order.
  - a. Roll call.
  - b. Pledge of Allegiance.
2. Agenda Approval.
  - a. Reading and approval of the minutes.
3. Public Comment.
  - a. Proclamations and presentations.
4. Consent Agenda.



5. Unfinished Business.
6. New Business.
  - a. Commissioner Comments and Committee Reports.
  - b. County Officers Reports.
  - c. Authorization of Expenditures.
  - d. Introduction and Consideration of Resolutions.
7. Adjournment.

[Back to top](#)

### **7.1.3 Calling the Meeting to Order**

When the time to meet arrives, the chair should call the meeting to order by rapping the gavel and saying: “The commission will come to order.” If the chair is absent, the members may elect a temporary chairman.<sup>2</sup>

[Back to top](#)

### **7.1.4 Roll Call**

Usually, the clerk calls the roll, which may follow the chair’s statement: “The clerk will call the roll.”

[Back to top](#)

### **7.1.5 Quorum Required**

A quorum is necessary before any commission business can commence. A quorum is defined as a majority of commissioners, regardless of whether there is a vacancy existing at the time. If there is no quorum, there can be no meeting. No motions, even for adjournment, or minutes are created except the clerk should note what transpired (no quorum, no meeting) in the minute book.

A Board can increase the number required for quorum.<sup>3</sup>

[Back to top](#)

### **7.1.6 Agenda Approval**

Although not required, it is a good practice to have the Board approve the agenda and make any changes at the beginning of the meeting. For example, if the Board is cutting an item from consideration or removing an item from the consent agenda, it is better to let everyone know that at the start of the meeting. The agenda is the responsibility of the entire Board, not just the chair.

[Back to top](#)

### **7.1.7 Approval of the Minutes**

The chair may request the clerk to read the minutes of the preceding regular meeting (or intervening adjourned or intervening special meeting) in the following manner: “The clerk will read the minutes of the preceding regular (or special) meeting.” The clerk then reads the minutes, unless copies are before each commissioner. The chair may ask: “Are there any

corrections to the minutes?” If no corrections are suggested, the chair may say: “The minutes stand approved as read.” If there is an alteration that is approved, the chair may ask: “Are there any further changes?” If there is no response, the clerk may add: “The minutes are approved as corrected.” Requests for corrections or alterations should occur by motion, followed by a vote on that motion. The clerk’s minutes of the current meeting should state the corrections from the previous minutes.

Although the clerk takes the minutes, the content of the minutes is determined by the Board.<sup>4</sup> The commissioners can decide how in-depth to make the minutes, requiring specificity on each item, or simply documenting motions and votes. Any executive session must be recorded in the minutes.<sup>5</sup>

Commissions are encouraged to ask the county clerk to continually furnish each member of the Board with a copy of the minutes before the next regular meeting. If this practice is followed, the minutes do not have to be read; they can just be corrected and approved as set out above.

[Back to top](#)

#### **7.1.8 Public Comments**

The chair passes to the next order of business by saying: “The next order of business is public comment.” When citizens appear at a meeting to present matters to the governing body, the question arises as to when they should be heard. As a general rule, it is better to hear citizens concerning items on the agenda as soon as it is convenient so they will not have to wait through the entire meeting. It is possible to set reasonable limits upon the amount of time given to the citizens present. As indicated in Chapter 6, there is no law requiring that public comment be received, particularly on matters not related to agenda business.

This portion of the agenda may also serve as an opportunity to offer proclamations, recognize individuals who are in attendance, or hear presentations.

[Back to top](#)

#### **7.1.9 Consent Agenda**

These are items that the board typically does not need to discuss individually. The Board may consider items under this section of the agenda in a single motion. The minutes of the meeting will show that a vote was taken on each item. Commissioners should receive and study the background materials prior to the meeting. Typically, the county administrator or a subcommittee has reviewed the items. Any member of the public, administrative staff, or council may ask for separate consideration.

A vote on a routine resolution can also be taken in this manner. If this procedure is followed, the motion or resolution must be carried out by a unanimous vote. If there is dissent, the Board should set the issue aside and deal with it separately.

[Back to top](#)

#### **7.1.10 Unfinished Business**

This point in the agenda provides an opportunity to address any business that the Board did not complete during the previous meeting. The chair should assess the minutes from the previous meeting to ensure that the Board addresses the remaining items. The Board should address all unfinished business before addressing new business.

Note that this category is not “old business.”<sup>6</sup> There are many reasons that a Board did not complete all the business items during a previous meeting, including:

- Matters that required research or additional information from an unavailable source;
- Matters that the Board did not reach before the previous meeting’s adjournment; or
- Motions that were pending at the time of adjournment.

The chair should not ask, “Is there any unfinished business?” Instead, the chair should review the minutes, prepare any items that the Board did not address, and move directly to the unfinished business.

[Back to top](#)

#### **7.1.11 New Business**

The heading of “New Business” is a broad category that can include anything that is original to the current meeting. The model agenda in this publication includes “Commissioner Comments and Committee Reports,” “County Officers Reports,” and “Introduction and Consideration of Resolutions.” This is merely a suggestion, and it is not essential that each of these sub-categories remain on the agenda for every meeting. The new business portion of the meeting simply provides an opportunity to begin the discussion on the new information before the commissioners.

[Back to top](#)

#### **7.1.12 Commissioner Comments and Committee Reports**

The chair passes to the next order of business by saying: “The next order of business is the committee reports and commissioner comments.” If a report is in writing, it should be distributed to the other commissioners prior to the meeting.

If commissioners serve on other boards, either representing the county or working with other agencies, it is useful to keep the Board informed of recent actions that may affect the county. Additionally, commissioners may wish to report any correspondence or other citizen contact they may have received since the last meeting. The Board should not, however, attempt to take action on these reports at that meeting. If Board action is required or staff work is necessary, the item should be placed on a future agenda.

[Back to top](#)

### **7.1.13 County Officers Reports**

Periodically, county officers and other staff will report to the Board on their activities or recommendations. Presenters should notify the county clerk in a reasonable time prior to the next scheduled meeting. These presentations should only address items that require action by the Board. Routine, written office, or departmental reports may be accepted and placed on file.

[Back to top](#)

### **7.1.14 Authorization of Expenditures**

Procedures for authorizing expenditures or claims vary from county to county. Counties will address most of the routine expenditures during the consent agenda, but more substantial items may warrant a place under new business. K.S.A. §§ 12-105a and 12-105b provide the basic procedures for presentment and payment of claims by municipalities.

Some terms found in K.S.A. § 12-105a that may prove useful include:

- Claim
  - A document stating an amount that a municipality owes to a claimant for material or service furnished to the municipality, or some action taken by or for the municipality.
- Warrant
  - An instrument ordering the treasurer of a municipality to pay a specified sum from a designated fund to a person or party who has filed a claim against the municipality.
- Check
  - An ordinary financial order directing a municipality's depository bank to pay money to the holder of a warrant.

Counties should review K.S.A. §§ 12-105a and 105b to ensure the Board is properly addressing expenditures and claims.

[Back to top](#)

### **7.1.15 Consideration of Resolutions**

A resolution must be considered at a commission meeting unless otherwise provided by law or where a statute provides a different procedure for a specific purpose. The resolution does not need to be read section by section. In some cases, however, the resolution will be read and the vote on final passage taken at the end of that reading. A vote on each section is not necessary. Generally, only one vote on a resolution is required, but there can be sound reasons for requiring two readings at different meetings for some resolutions. Separate readings give commissioners the opportunity to carefully consider the resolution and thus possibly prevent unwise legislation.

[Back to top](#)

#### **7.1.16 Addressing the Chair**

The chairperson is the presiding officer at the Board meeting. Meeting decorum usually means that each commissioner addresses the chair and waits until he or she is recognized before proceeding. The practice of requesting permission to speak also minimizes conversation unrelated to the agenda item. A member wishing to have the floor should address the chair by saying “Mr. (or Madam) Chairman” and wait until he or she is recognized to speak.

[Back to top](#)

#### **7.1.17 Maintaining Order**

If a member uses improper language or does not observe the rules, the chair may call the member to order by saying, “The speaker is out of order.” If the chair neglects to do so, another member may say, “I call the member to order,” in which case the speaker must cease speaking until the chair decides whether the member is out of order.

[Back to top](#)

#### **7.1.18 Dividing the Question**

If a commissioner introduces a motion that consists of two or more independent propositions a member may offer a follow-up motion. The motion should resemble the following: “The question should be divided into (such and such) propositions.” By doing so, the Board can separately consider, debate, and act upon the various propositions.

[Back to top](#)

#### **7.1.19 Informal Consideration**

As noted above, since the statutes prescribe no parliamentary procedure, some commissions proceed informally. Formality, however, expedites meetings and promotes good decision-making. Regardless of the Board’s use of formal procedures, it is typical for commissioners to discuss matters before making motions. Occasionally, however, it will be clear that the Board has reached consensus on whether to take action. If this happens and no one takes the initiative to bring action, it is the responsibility of the chair to ask: “Is there a motion?” If there is no motion, the chair should proceed to the next agenda item.

[Back to top](#)

#### **7.1.20 Moving Previous Questions, Calling the Question or Vote Immediately**

Motions to move the previous question, call the question, or to vote immediately each serve to close debate. The previous question may take the following form: “I move/call the previous question” or “I move we vote immediately.” Usually, the rules only permit action on the motion that is under discussion.

[Back to top](#)

### **7.1.21 Making Motions**

Any Board member may make a motion or offer a second motion—including the chair. A common example of a motion is: “Mr. (or Madam) Chairman, I move that...”

[Back to top](#)

### **7.1.22 Seconding Motions**

A motion may be seconded in the following manner: “Mr. (or Madam) Chairman, I second the motion.” Usually, it is “I second the motion.” Some three-member bodies do not require motions to be seconded.

[Back to top](#)

### **7.1.23 Stating the Motion**

Immediately after the motion, or immediately after the second if a second is required, the chair should state the motion. A motion may be stated in the following manner: “Commissioner \_\_\_\_\_ has moved that...” or “We have a motion and a second that...” The chair should listen attentively to the original motion so that it can be accurately restated. As general practice, the chair should restate the motion before the vote, so members are clear about the decision they are making. If the motion is not clear the chair should ask the maker to restate it or request the clerk to read the motion as recorded in the minutes.

[Back to top](#)

### **7.1.24 Appeal from the Decision of the Chair**

On occasion the chair may refuse to entertain a motion even though it is in order. This may occur when the chair is unfamiliar with parliamentary procedure or—inappropriately—when the chair does not support the proposed action. The chairman may also stifle matters that the commission would like to approve or at least discuss. When this happens, the commission does have recourse.

Any decision of the presiding officer is subject to appeal. The action of the commission, when it believes the decision of the chair is contrary to parliamentary rule or law, is to appeal the decision of the chair or, otherwise stated, by appeal to the commission. There is no reason for the chair to feel that such an appeal is a personal affront. Members have the right to differ with the chair as they do with one another during debate.

When a member of the commission believes that the decision of the chair is wrong, the member may say, “Mr. Chairman, I appeal from the decision of the chair.” The chair should then say, “Commissioner \_\_\_\_\_ has appealed the chair’s decision. The question is, shall the decision of the chair stand as the decision of the commission?” Limited debate is in order on the appeal. A majority vote in the negative is required to overrule the decision. If the decision

of the chair is sustained no further action is taken, but if the decision of the chair is not sustained, the commission goes forward with a discussion of the motion or other matters before the body.

In the event the chair is not sustained, there is no reason for the chair to step down and call some member to preside, nor is there any reason for another member to take over the presiding duties. The chair's duty is to recognize the rights of the commission even if he or she does not agree with the proposed action.

On rare occasions, the chairman has improperly ruled an appeal out of order or declared the meeting adjourned. Both rulings are improper. The chair cannot summarily adjourn a meeting. If the appeal from the decision of the chair is made immediately following the ruling, it is not out of order. If the chair refuses to honor the appeal, the person making the appeal should then assume the responsibility to state the question, suggest limited debate, and then call the question. This requires leadership and courage by the person appealing—particularly if the chair gavel for “order,” attempts to proceed with other business, or leaves the meeting. It is, however, the proper course of action. Commissioners should cooperate in properly disposing of the appeal, and the clerk should note the outcome of the appeal in the minutes regardless of its success. Henry Martyn Robert, author of *Robert's Rules of Order*, once noted that “parliamentary law should be the servant, not the master, of the assembly.” The same is true for the chair of the commission.

[Back to top](#)

#### **7.1.25 Questions or Remarks; Debatable and Non-debatable Motions**

If the motion is debatable, the chair should say, after stating the motion, “Are there any remarks?” or “Are you ready for the question?” The proposition is then open to discussion or debate.

As noted above, sometimes the debate on a matter precedes the motion. This may happen where there is discussion on a report, a request by an officer, or some other matter. And it is only after the discussion that it appears the Board should take action. Even in these situations it is advisable for the chair to ask for any additional discussion after a commissioner makes a motion. To expedite procedure, the chair may ask, “Is there a motion?” The following classifies various kinds of motions as “debatable” or “not debatable” under *Robert's Rules of Order*.

#### **Debatable**

- (1) To postpone definitely.
- (2) To commit or recommit.
- (3) To amend.
- (4) To postpone indefinitely.
- (5) The main motion.
  - a. A main motion is one made to begin the consideration of some matter. After being seconded, the Board may debate, amend, or apply an amending motion to

the original motion. A main motion may not be made while another motion is being considered.

(6) Appeal of a motion.

(7) To reconsider. (If the motion to be reconsidered is debatable.)

### **Not Debatable**

(1) To fix a time to adjourn.

(2) To adjourn.

(3) To recess.

(4) A question of privilege.

a. Certain motions are considered privileged, which means they may be taken up at any time and must be decided before the commission returns to other business.

(5) Call for orders of the day.

(6) To table (postpone temporarily).

(7) Consider the previous question (vote immediately).

(8) To modify debate.

(9) Appeal.

a. If the appeal relates to the rules of speaking, priority of business, or to a decision on a non-debatable question—if made while a vote is being determined.

(10) To suspend the rules.

(11) Point of order.

(12) Call to order.

(13) Objection to reconsideration.

(14) Requests.

(15) Call for division.

(16) To withdraw a motion.

(17) To divide the question.

(18) To reconsider (if the motion to be reconsidered is not debatable).

(19) To take from the table (resume consideration).

[Back to top](#)

### **7.1.26 Putting the Question**

After debate or if the question is not debatable, the chair puts the question to a vote of the Board. The chair may offer the following comment: “The question is ... All those in favor say ‘aye’; all opposed say ‘no’.” If a roll call is required, the statement regarding voting will have to be changed accordingly by indicating that the clerk will call the roll.

[Back to top](#)

### **7.1.27 Stating the Result**

Immediately after the vote, the chair states the result. If the vote is by voice, the chair judges which side has won. If the vote is by show of hands or standing vote, a quick count is made. The chair announces the vote by saying: “The ayes have it and the motion is carried” or “the nays



have it and the motion fails.” When the vote is by show of hands or standing, the chair may say: “The affirmative has it and the motion is carried.” When a vote by voice is about even, the chair may say: “The ayes appear to have it” –hesitate- “the ayes do have it, and the motion is carried.” This gives a member a chance to call for a division if there is any doubt as to the correctness of the chair’s decision.

[Back to top](#)

#### **7.1.28 Number of Affirmative Votes Required for Business**

Kansas statutes do not state with certainty how many votes within the quorum are required for action. In one case the Kansas Supreme Court indicated that a majority of a quorum is sufficient.<sup>7</sup> In that case, a city of the second class had eight council members. Five were present, and four voted favorably for a resolution. The court held that because a quorum was present, a majority of the quorum was all that was needed to lawfully take the action. The Legislature has altered the Kansas Open Meetings Act and the quorum definition since the Court decided this case. The Court’s ruling, however, would likely be persuasive in setting the requirement of an affirmative vote by a majority of the voting members in a proper meeting. The qualifier to this rule is the home-rule power to change the requirement with a county resolution.

[Back to top](#)

#### **7.1.29 Abstentions**

As a general rule, commissioners should not abstain from voting. There is, however, one instance when a commissioner should abstain from voting: when a county commissioner has a conflict of interest defined by K.S.A. § 75-4301a—that is, a “substantial” interest in a matter that the Board is considering.

A county commissioner has a substantial interest if the commissioner or the commissioner’s spouse has the following: (1) an interest in a business that exceeds \$5,000, or 5%, in the last year; or (2) receipt—collectively or individually—of \$2,000 from a business; or (3) receipt of \$500 in goods or services without consideration; or (4) the title of officer, director, associate, partner, or proprietor in a business. If the county commissioner or the commissioner’s spouse fits one of these categories, he or she is obligated to abstain.<sup>8</sup> No other situation is grounds for abstention. The county elects commissioners to address the difficult subjects. A vague and general use of conflict beyond what the Legislature prescribes is not reason to abstain. Commissioners have an obligation to educate themselves on the issues and vote in the best interests of the constituency.

Another issue that may arise is how to tally an abstention during a vote. The common-law rule is that an abstention is counted as an affirmative vote with the majority. The Kansas Supreme Court has held that is the rule in Kansas unless there is a constitutional or statutory requirement that overrules the common-law rule.<sup>9</sup> The Attorney General gave a specific example when considering a charter resolution under K.S.A. § 19-101b, which requires a

unanimous vote of the Board.<sup>10</sup> In those circumstances, the Attorney General opined that an abstention is not to be counted with the majority.

[Back to top](#)

### **7.1.30 Conclusion**

Rules of order are important to good county government. Whether strictly formal or casually informal, structured rules and an organized agenda will help counties effectively and efficiently carry out commission business.

[Back to top](#)

## CHAPTER 7 ENDNOTES

---

<sup>1</sup> Dave Rosenberg, *Rosenberg's Rules of Order* (2011). (Accessed April 7, 2023), <http://www.cacities.org/UploadedFiles/LeagueInternet/77/77d4ee2b-c0bc-4ec2-881b-42ccdbbe73c9.pdf>

<sup>2</sup> K.S.A. § 19-219.

<sup>3</sup> *Stephan v. Bd. of Sedgwick Cty. Comm'rs*, 244 Kan. 536, 538, 770 P.2d 455, 457 (1989).

<sup>4</sup> A.G. 2006-1.

<sup>5</sup> K.S.A. § 75-4319(a).

<sup>6</sup> Jim Slaughter, *Order of Business* (Accessed April 7, 2023), <http://www.jimslaughter.com/uploads/presidelikeyapro.pdf>

<sup>7</sup> *Smith v. State*, 64 Kan. 730, 68 P. 641 (1902).

<sup>8</sup> K.S.A. § 75-4301a.

<sup>9</sup> *City of Haven v. Gregg*, 244 Kan. 117, 122, 766 P.2d 143, 146 (1988).

<sup>10</sup> A.G. 97-4.

## CHAPTER 8: KANSAS OPEN MEETINGS ACT (KOMA)

### ARTICLE 1: INTENT AND PURPOSE OF THE KOMA

The open meetings law exists to ensure that government represents its citizens with elected officials acting with openness. The statute begins by stating:

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.<sup>1</sup>

To carry out the intent of the Act, the Kansas Supreme Court has said that the public agencies and the courts should treat the law with “broad construction.”<sup>2</sup> The Kansas Attorney General stated this more flatly by expressing the need to interpret the Act broadly and treat exceptions to it narrowly.

[Back to top](#)

### ARTICLE 2: GOVERNMENTAL BODIES SUBJECT TO KOMA

#### 8.2.1 Two Requirements

A body is subject to the provisions of the KOMA if a two-part test is met. The KOMA applies to meetings of:

- 1) All legislative and administrative bodies and agencies of the state and political and taxing subdivisions thereof, including boards, commissions, authorities, councils, committees, subcommittees, and other subordinate groups thereof; and
- 2) Those which receive or expend and are supported in whole or in part by public funds.<sup>3</sup>

The governing bodies of all political and taxing subdivisions are subject to the KOMA, such as cities, counties, townships,<sup>4</sup> school districts, community colleges,<sup>5</sup> watershed districts,<sup>6</sup> rural water districts, and drainage districts.<sup>7</sup> All state boards and agencies must comply with KOMA, unless otherwise provided by law. The Attorney General has opined that legislative conference committees and the Turnpike Authority<sup>8</sup> are subject to the law and that precinct committee meetings are not subject to KOMA.<sup>9</sup> Overall, individuals must remember that the receipt of any public assistance—be it monetary, material, or otherwise—will satisfy the second prong of the test.

Judges and judicial bodies, such as the Supreme Court and the Court of Appeals, are exempt from the open meetings law.<sup>10</sup> The law also provides that a public body authorized by law to exercise quasi-judicial functions is not required to have an open meeting when the body is *deliberating* matters relating to a decision involving such quasi-judicial functions.<sup>11</sup> For

example, the deliberations of a zoning board or hearing panel may be behind closed doors, but binding action taken by the body must in an open meeting.<sup>12</sup>

Staff meetings are not subject to the KOMA because they are not legislative or administrative bodies. A meeting of the county clerk, treasurer, and register of deeds, for example, is not subject to the Act because, while the individuals are publicly elected officials, they are not a public body.

[Back to top](#)

### **8.2.2 Subordinate Groups**

Subordinate groups of public bodies must also comply with the open meetings law. The court has ruled that subordinate groups are subject to the Act even if they do not in themselves receive or expend public moneys so long as the parent or appointing body is supported by public monies.<sup>13</sup>

The Attorney General has stated that it is the nature of a group—not its designation—that determines if it is covered by the KOMA. A group is subject to the Act if its parent group appoints it to weigh options, discuss alternatives, or present recommendations or a plan of action.<sup>14</sup> The Attorney General has determined that school district advisory boards,<sup>15</sup> fire district boards,<sup>16</sup> and city recreation commission boards<sup>17</sup> are examples of subordinate groups required to hold open meetings.

Joint boards composed of representatives or members of different governmental bodies are subject to KOMA. For example, if a city council and a county commission each appoint persons to a joint board to study trash disposal, that board is subject to the KOMA.<sup>18</sup>

[Back to top](#)

### **8.2.3 Non-Profit Corporations**

The open meetings law does not apply to the governing bodies of private organizations or corporations.<sup>19</sup> But non-profit corporations that act as public agencies and receive or expend public monies are subject to the KOMA. In *Memorial Hosp. Ass'n, Inc. v. Knutson*, a 1986 Kansas Supreme Court case, the Court held that when a hospital board leases hospital property to another, the lessee is not subject to the open meetings requirement if the lessee: “(1) has no governmental decision making authority to expend public funds, and (2) is an independent entity which by contract agrees to provide hospital services under a lease of hospital property from a board of trustees.”<sup>20</sup>

So, in that specific case, the Court gave an example of a non-profit that did not fall under KOMA. But many non-profits do if the entity itself receives or expends public funds or the parent group receives or expends public funds. If either is true, then KOMA applies.

The Attorney General has identified the following non-profit corporations as subject to the KOMA:<sup>21</sup> Area Agencies on Aging, Economic Opportunity Foundation, Inc., McPherson Co. Diversified Services, Inc., Three Rivers, Inc., Cowley County Diversified Services, HELP, Inc.,

Southwest Developmental Services, Inc., Finney County Economic Development Corporation, Extension Councils, and Township Boards.

The Attorney General has said that the following organizations are not subject to the KOMA because they do not meet the test on public funds:<sup>22</sup> Kansas University and Wichita State University Endowment Associations, Planned Parenthood, Hutchinson Cosmosphere, electric cooperatives, Parsons Chamber of Commerce, Association for the K-10 Corridor Development, Koch Commission on Crime Reduction and Prevention, the state consensus estimating group, Mid-America Commercialization Corp., Kansas Venture Capital, Inc., Prairie Village Economic Development Commission, and Hesston Area Senior Center. Regardless, KAC recommends that even groups that may not technically fall under KOMA still operate with the openness prescribed by the open meetings act.

[Back to top](#)

## **ARTICLE 3: WHAT IS A “MEETING?”**

### **8.3.1 Definition of a Meeting**

In 2015, the legislature amended K.S.A. § 75-4317a to define a “meeting” as follows:

- 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;
- For the purpose of discussing the business or affairs of the public body or agency.

Each of these requirements has important considerations for county officials.

[Back to top](#)

### **8.3.2 Meeting is Defined as any Gathering or Assembly**

Under the definition of a meeting under K.S.A. § 75-4317a, two commissioners of a three commissioner Board will create a meeting any time they discuss business or affairs of the Board, whether in a public meeting or in private. The addition to the statute of the references to telephone or any other medium for interactive communication expanded the definition to include all forms of simultaneous communication between Board members. The legislative amendment makes it clear that physical presence is not required; a meeting can occur by telephone, e-mail, or any other means of interactive communication. Thus, two commissioners discussing county business by phone constitutes a meeting subject to the KOMA.

One Attorney General Opinion, A.G. 09-29, examined email discussions and noted that interactive communication requires a mutual or reciprocal exchange between members of a body. The AG opined that interactive communication via email does not occur when a private citizen communicates with a majority of the body and one member replies back and shares the response with other members. But if members of the body respond back and forth and there is

intent to reach agreement on a matter that would require binding action, that communication could be subject to KOMA.

This is not to say the Board cannot conduct a meeting by telephone, or with some members participating by telephone. As long as all of the other requirements are met—such as providing notice and ensuring the public can hear the conversation—such a meeting may be held.<sup>23</sup> That said, KAC advises against doing so because it undermines the spirit of openness and accessibility for citizens.

[Back to top](#)

### **8.3.3 A Majority of the Membership—Quorum Replacement**

In 2008 the Kansas legislature deleted the requirement of a majority of a quorum from the definition of a meeting in K.S.A. § 75-4317a. This means a quorum is no longer relevant for KOMA purposes. Now, a *majority of the members of a public body* may not meet except in a public meeting. Therefore, if a county has a three-member Board, two members could not meet together under the old law, and they still cannot meet under the new law. With a five-member Board, however, two members could meet without a KOMA violation.

The legislature also amended K.S.A. § 75-4318 to mandate that interactive communications in a series be open if they:

- 1) Collectively involve a majority of the membership of the public body or agency;
- 2) Share a common topic of discussion concerning the business or affairs of the public body or agency; and
- 3) 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.

Serial meetings inherently violate KOMA because there is no way to give notice of such meetings, or for the public to attend the one-by-one meetings between each member of the body.

[Back to top](#)

### **8.3.4 Business is Discussed**

The purpose of the open meetings law is to ensure “an informed electorate” – to give citizens the opportunity to know what their government is doing. For that reason the KOMA applies to all meetings “for the purpose of discussing the business or affairs of the body.”

It is important to note that KOMA does not merely apply to meetings in which business is transacted and votes taken but includes all gatherings in which public business is discussed. As a Kansas appellate court has stated, “meeting” includes all gatherings at all stages of the decision-making process.<sup>24</sup> A public body cannot avoid the requirements of the KOMA by labeling a gathering as a “work session” or a “retreat.” The title of the meeting is irrelevant if business is discussed.<sup>25</sup>

Purely social gatherings do not violate the KOMA. The third element is not met so long as business is not discussed. A public body can hold a social event, such as dinner to welcome new members. However, if members talk about business, a meeting subject to the KOMA occurs. Again, the name of a gathering is irrelevant if all three elements of a meeting exist. To avoid rumors and allegations of wrongdoing, it is advisable for public bodies not to engage in exclusive social events.

There is no law prohibiting county commissioners from holding meetings in locations other than the courthouse. The Attorney General has opined that a meeting cannot be in a location that would make it impossible for the public to attend without cost, such as a country club.<sup>26</sup> While a meeting could be in a restaurant, there must not be a requirement that persons attending purchase a meal, pay a cover charge, or other similar restrictions. The public must be able to listen to a public body's discussions. The key to determining whether the location of a meeting subverts the statutory mandate of openness is accessibility of the meeting to the public. Note that other laws such as the Americans with Disabilities Act will govern the accessibility of the meeting room for members of the public with disabilities.

Another situation to consider is when a public body meets with another public body. For example, two or more commissioners attend a city council meeting to discuss with council members an issue that affects both entities. A county commission meeting occurs under this scenario as all three elements of meeting are met: a gathering of a majority of the members of the governing body for the purpose of discussing the business of the body. Such joint meetings can occur so long as both public bodies meet the notice provisions and other requirements of the KOMA.<sup>27</sup>

Finally, consider the breadth of "discussing business" with the following examples. If—before every scheduled meeting—commissioners gather across the street from the courthouse at the coffee shop, and they discuss only the weather and sports, there is no KOMA violation. If, however, the conversation concerns the impending meeting, a violation occurs. As a final example, consider two commissioners whose daughters play on the same softball team. They are seated near each other at the game. A constituent approaches, asking about more gravel on a road. There is a gathering of a majority of the Board and if they start discussing business that should properly come before the full Board, they violate KOMA. These examples serve as reminders to be diligent in only discussing business under the terms of the open meetings law.

[Back to top](#)

## **ARTICLE 4: NOTICE OF MEETING**

### **8.4.1 Notice Requirement**

If the Board completes the three parts of the meeting definition, then a meeting subject to the KOMA occurs and the county must provide notice of the meeting.<sup>28</sup> If the gathering does not qualify as a meeting, such as a purely social event, there is no requirement to give notice. Additionally, the county must provide notice to those persons who specifically requested notice of meetings. Stated another way, the Legislature does not require public bodies to provide



notice of meetings if no one has asked to be notified. Despite the absence of requiring general notice to the public, it is the sign of a well-functioning and open government to broadly circulate notice of public meetings.<sup>29</sup>

Notice of the date, time, and place for all meetings, including committee meetings, must be furnished to all persons that have requested it.<sup>30</sup> A public body may require persons requesting notice to resubmit their request each year to continue receiving notice. The public body must, however, tell the person that it will discontinue notice unless they resubmit their request.<sup>31</sup> The presiding officer, or other person calling the meeting, must furnish notice of the meeting.<sup>32</sup>

[Back to top](#)

#### **8.4.2 Form of Request and Notice**

The statute concerning KOMA notice does not provide much guidance on the notice requirement. As a result, the Attorney General has issued a number of opinions in this area.

A request for notice can either be made in writing or orally.<sup>33</sup> The residency of the requester is irrelevant and no fee can be charged for providing notice even if you mail it to Timbuktu.<sup>34</sup> If the notice is requested by petition, the petition must designate one person to receive notice on behalf of all persons named in the petition.<sup>35</sup> Similarly, if notice is furnished to an executive officer of an employees' organization or trade association, notice is deemed to have been furnished to the entire membership.<sup>36</sup>

If people have requested notice of your meetings, posting or publishing notice in the newspaper is insufficient. Public bodies must furnish notice to each individual.<sup>37</sup> A single notice can suffice for regularly scheduled meetings.<sup>38</sup> For example, "commission meetings are held the second and fourth Mondays of the month at 9:00 a.m. in the courthouse." Notice need not be given before each meeting; a single notice meets the requirement. However, if the date, time, or location ever changes, or if a special meeting is called, the county must notify the requester.

The law imposes no time limit for receipt of notice prior to a meeting. The Attorney General's office has followed a "reasonable time" standard—reasonableness depending on the circumstances of the situation.<sup>39</sup> For instance, if a meeting is scheduled two weeks in advance, providing notice the day before the meeting would not be reasonable. According to the Attorney General, when a governing body gives notice that a meeting will be held on a certain day and subsequently moves that meeting to another day without a good faith attempt to notify the persons requesting notice, then the body has violated the notice requirement.<sup>40</sup>

[Back to top](#)

#### **8.4.3 Agendas**

The KOMA does not require that an agenda be made. But it does say if an agenda is prepared, copies must be made available to any person requesting one.<sup>41</sup> The body is not required to mail agendas, but it can provide them in a public place or at the meeting.<sup>42</sup>

The Kansas appellate courts have said that if a body chooses to create an agenda, it should include the topics planned for discussion.<sup>43</sup> Additionally, the court determined a school board is not required to have an agenda, but if it does have one, it can be amended.<sup>44</sup>

[Back to top](#)

## **ARTICLE 5: OPEN MEETINGS AND EXECUTIVE SESSIONS**

### **8.5.1 Open Meetings**

Any person has the right to attend a public meeting. The KOMA, however, does not give the public a right to be placed on the agenda or to participate in meetings. It is a “right to listen” law rather than a “right to speak” law. The public does have a right of access to any records or documents reviewed or identified during the public meeting.<sup>45</sup> Cameras and recording devices must be allowed at public meetings, but the public agency may adopt “reasonable rules designed to ensure the orderly conduct of the proceedings.”<sup>46</sup>

The KOMA prohibits secret ballots.<sup>47</sup> The public must be able to ascertain how each member voted, such as a roll call or show of hands. Voting can be done by paper only if each member writes their name on the ballot along with their choice and the paper ballots are open for inspection by any person.<sup>48</sup> This rule goes to the heart of KOMA – how can the public be informed about their local government if they do not know how they voted?

The Attorney General has issued several opinions concerning the location of a meeting. The key to determining whether the location of a meeting would subvert the statutory mandate of openness is accessibility to the public.<sup>49</sup> Therefore, county commissioners can hold their meetings in the various towns in the county if notice of the location is given to persons who have requested notice. Additionally, a meeting can be located outside the state of Kansas if: (1) it is considered reasonably necessary to conduct public business outside of Kansas, rather than a subversion of the policy for open public meetings; (2) persons requesting notice of the meeting will be given such notice; and (3) the inconvenience and cost for interested persons to attend a meeting outside of Kansas or by teleconference or videoconference is not excessive.<sup>50</sup>

The Attorney General has concluded that public bodies can meet by telephone conference call so long as the KOMA requirements are met.<sup>51</sup> The county must still give notice of the meeting, and the county must also provide a speakerphone at a location so citizens can attend and listen to the conversation among the members. Conference calls are generally used most often by state boards whose members are located all over the state. A county commission, however, could use a conference call to accommodate an absent member (e.g., hospitalization, out of town, etc.).

[Back to top](#)

## 8.5.2 Executive Sessions – Procedure

The open meetings law allows public bodies to recess into an executive session to discuss certain subjects behind closed doors. An open meeting must be held before a body can recess into executive session; a body cannot just meet privately and state that an executive session was held.<sup>52</sup>

To go into executive session, a motion must be made, seconded, carried, and recorded in the minutes. The motion must contain a statement describing the subject to be discussed, the justification listed in K.S.A. § 75-4319(b) for closing the meeting, and the time and place the open meeting will resume.<sup>53</sup> Two examples of executive session motions follow:

“I move we recess into executive session for the reason of attorney-client privilege to discuss pending litigation. We will reconvene the open meeting in the conference room at 10:00 a.m.”

“I move we recess into executive session on the basis of personnel matters to review employee evaluations. We will return to the commission room in 30 minutes.”

The question as to how much detail a motion must contain has been addressed, but not completely answered. The Kansas Court of Appeals has said that the following motion was sufficient; closure was “for the purposes of discussing personnel matters of non-elected personnel because if this matter were discussed in open session, it might invade the privacy of those discussed.”<sup>54</sup> The Attorney General argued in that case that the motion did not contain a sufficient justification statement. In a subsequent opinion, the Attorney General stated as follows:

In order to comply with the letter and the spirit of the law and to avoid the appearance of intent to subvert the purposes of the act, we encourage public bodies who wish to go into executive session to make a motion which, among other things, contains the subject and a statement concerning the justification. In our opinion *the justification statement should be more than a reiteration of the subject*. The KOMA does not require the justification statement to be so detailed that it negates the usefulness of an executive session. However, ...this statement should explain why an executive session is necessary or desirable. Such a motion gives the public assurances that the executive session is permissible and in the public interest and may remind the members of the public body of the limitations upon and purpose served by the executive session discussion.<sup>55</sup>

The AG opinion speaks to the spirit of the law and the importance of extending as much openness as possible without violating an individual’s privacy rights.

[Back to top](#)

### 8.5.3 Executive Session – Subjects

The KOMA allows certain topics to be discussed behind closed doors.<sup>56</sup> The most commonly used exemption is personnel matters of non-elected personnel. “Personnel” means an employee of a public agency. Appointments to boards or committees are *not* employees and cannot be discussed in executive session.<sup>57</sup> Additionally, independent contractors hired by public bodies are not employees.<sup>58</sup> Therefore, if a public body desires to hire an independent contractor, such as an engineer or an attorney, discussions regarding the selection and qualifications must be in an open meeting.

The Attorney General has said that an executive session can be used to discuss an individual, but not groups in general.<sup>59</sup> For example, an executive session could be held to discuss whether a certain employee should receive a pay raise. However, discussions regarding across-the-board pay raises for all employees, such as cost of living, must be in open session. An executive session may be used to interview, discuss, and consider an applicant or prospective employee, but all binding action must be done in open session.<sup>60</sup>

A public body may go into executive session for consultation with its attorney which would be deemed privileged in the attorney-client relationship.<sup>61</sup> Only the attorney and the client can be present in the executive session and the communication must be privileged, meaning, it is a conversation limited to the client and the attorney in which legal advice is provided and it is intended to be confidential.<sup>62</sup> *The attorney must be present*; an executive session cannot be called to discuss a letter from the body’s attorney if the attorney is not present.<sup>63</sup> This is the exemption most often abused, and public agencies should—as a general rule—only use the exemption when that agency is facing litigation.

The third subject which may be discussed behind closed doors includes matters relating to employer-employee negotiations—regardless of in consultation with the representative for the employees.<sup>64</sup> The Attorney General has opined that public bodies can meet in executive session to discuss the conduct or status of negotiations, with or without the authorized representative who is actually doing the bargaining.<sup>65</sup>

A public body may go into an executive session to discuss confidential data relating to financial affairs or trade secrets of corporations, partnerships, trusts, and individual proprietorships.<sup>66</sup> County economic development commissions generally use this exception. This exception can be used when the topic clearly involves confidential financial data or “trade secrets” as the term has been defined by Kansas courts.<sup>67</sup>

The KOMA allows actions affecting a student, patient, or resident of a public institution to be discussed in closed session.<sup>68</sup> The purpose is to protect individual privacy. A public hearing must be held if requested by the person involved.

An executive session may be held to preliminarily discuss the acquisition of real estate.<sup>69</sup> The Attorney General has said that this exception can be used only when the primary focus of the

discussions is real property; negotiating strategy alone is not sufficient for a closed-door discussion.<sup>70</sup> The sale of property must be discussed in an open meeting.<sup>71</sup> The purpose of this exception is to prevent the premature release of a County's possible purchase of real property so that the price does not increase.

Closed, executive sessions are also allowed for matters of security of a public body or agency, information system, building, or facility if public discussion of such matters would jeopardize the security of those entities.<sup>72</sup>

Keep in mind that all of these session topics are exemptions to the rule and the presumption that meetings are open. It should be relatively uncommon for a public agency to work in executive session.

[Back to top](#)

#### **8.5.4 Open v. Closed Meetings**

By statute, the open meetings law declares it to be “against the public policy of this state” for any meeting subject to the act to be adjourned to another time or place in order to subvert the policy of openness.<sup>73</sup> This means, for example, that if a meeting is scheduled and citizens are in attendance, the meeting cannot be adjourned to prevent or discourage the public from attending the meeting or to avoid discussion of the matter before the public.

The open meetings law specifically states that binding action cannot be taken in executive session.<sup>74</sup> For example, a public body cannot take binding action on a settlement agreement behind closed doors.<sup>75</sup> The Kansas Court of Appeals has said that the KOMA “is not violated where a consensus may have been reached in executive session, but the motion and action thereon took place in an open meeting.”<sup>76</sup> If a consensus is reached in executive session that amounts to binding action, a vote by the commission must be held in open meeting.<sup>77</sup>

Only the members of the public body have the right to attend executive sessions.<sup>78</sup> “Mere observers” are not permitted when meeting in executive session.<sup>79</sup> Also, a county clerk does not have the right to attend the executive session of a county commission.<sup>80</sup> Persons who aid the body in its discussions may be admitted to an executive session, such as the Human Resource Director when discussing a personnel issue.<sup>81</sup> While the law does not prohibit a member of the Board from discussing in public what occurred in executive session, there are a number of policy reasons for avoiding this. If executive session is necessary, then commissioners should tread cautiously when discussing what occurred during executive session. The best step is to consult with your county counselor before doing so. Also, note that Kansas Federal Court has ruled that matters discussed in a closed meeting are not privileged from discovery.<sup>82</sup>

A complicated situation arises when a matter before a public body involves subjects that may be discussed behind closed doors and subjects not exempt from public discussion. The appellate court has stated, based on the facts of the case before it, that when some subjects

are exempt from open discussion and other are not exempt, if segregation of the materials into open and closed sessions would make a coherent discussion pragmatically impossible, it is reasonable to close the entire meeting.<sup>83</sup> In such a situation it is generally the best policy, in order to avoid the appearance of impropriety, to discuss as much of the subject as possible in open meeting. Remember, the KOMA permits certain subjects to be discussed privately—it does not require it. Public agencies can always discuss topics in open meetings, as openness is the presumption in Kansas.

#### **8.5.5 Procedure for Recessing to Executive Session<sup>84</sup>**

K.S.A. § 75-4319(a) provides the statutory requirements for executive session including:

- (1) A statement describing the subjects to be discussed during the closed or executive meeting;
- (2) The justification listed in subsection (b) for closing the meeting; and
- (3) The time and place at which the open meeting shall resume.

The following form can help your governing body adhere to the requirements of the law.

#### **Form of Motion:**

1. I move that we recess to executive session under the following exception<sup>85</sup> to the Kansas Open Meetings Act:

\_\_\_\_ Pursuant to the non-elected personnel matter exception  
\_\_\_\_ Pursuant to the attorney-client privilege exception  
\_\_\_\_ Pursuant to the employer-employee negotiations exception  
\_\_\_\_ Pursuant to the confidential data (trade secrets) exception  
\_\_\_\_ Pursuant to the student, patient or resident exception  
\_\_\_\_ Pursuant to the preliminary discussion of acquisition of real estate exception  
\_\_\_\_ Pursuant to the matters relating to security measures exception

2. The subject to be discussed during executive session:

\_\_\_\_\_  
\_\_\_\_\_

(No subject may be discussed if not listed here.)

3. Open session will resume today/tonight at \_\_\_\_\_ A.M./P.M. in the council chambers.

4. Those persons to attend include:

\_\_\_\_\_  
\_\_\_\_\_

5. Motion made by: \_\_\_\_\_  
Motion seconded by: \_\_\_\_\_

Members voting for

---

---

---

Members voting against:

---

---

---

Motion: Passes \_\_\_\_\_ Fails \_\_\_\_\_

Date: \_\_\_\_\_

K.S.A. § 75-4319 provides, in part, that the “complete motion shall be recorded in the minutes of the meeting and shall be maintained as a part of the permanent records of the [county]. Discussion during the closed or executive session shall be limited to those subjects stated in the motion.”

This form, if completed and followed, should meet the statutory requirements.

If you have questions, contact your attorney.

If there are doubts, resolve the question in favor of the public’s right to know and conduct the discussion in an open meeting.

[Back to top](#)

## ARTICLE 6: KOMA ENFORCEMENT

### 8.6.1 Civil Penalties

The KOMA provides for civil, not criminal, penalties.<sup>86</sup> There are three types of penalties: (1) fines; (2) injunction/mandamus; or (3) voiding the action improperly taken in executive session.

If a prosecutor brings a KOMA action, the court can assess a fine not to exceed \$500 for each violation. Any person—including the Attorney General, the county attorney, or the district attorney—can bring an injunction or mandamus action. Generally, an injunction requires a public official to stop performing some act, and a mandamus mandates that a public official perform a certain act.

An action to void any action taken by the public body that violated the KOMA must be brought by the Attorney General, the county attorney, or the district attorney.<sup>87</sup> Such an action must be filed within 21 days of the alleged violation. The appellate court has said that it will not void any action and will overlook technical violations of the law if the spirit of the law was met, there was a good-faith effort to comply, there was substantial compliance with the KOMA, no one was prejudiced, and the public's right-to-know was not effectively denied.<sup>88</sup>

[Back to top](#)

### 8.6.2 Enforcement Procedure

The county or district attorney and the Attorney General have concurrent jurisdiction to investigate or bring an action. Private individuals may bring an action for mandamus or injunction.<sup>89</sup> Jurisdiction is proper in the county where the action occurred.<sup>90</sup> The courts are directed to give KOMA cases precedence on the docket and to assign the earliest possible hearing and trial dates.<sup>91</sup>

The state has the initial burden to show *prima facie* that a violation occurred. The burden of proof shall be on the public body or agency to sustain its action.<sup>92</sup> The plaintiff may receive court costs if a violation of the law is established. The defendant may receive costs only if the suit was frivolous.<sup>93</sup> Specific intent to violate the law is not required. A “knowing” violation occurs where there is purposeful commission of the prohibited acts.<sup>94</sup>

Violation of the open meetings law can be grounds for ouster from office.<sup>95</sup> Additionally, *alleged* violation of the KOMA can be grounds for recall.<sup>96</sup> Any action for ouster or recall must be pursued separately and does not happen automatically with the KOMA violation.

[Back to top](#)

### 8.6.3 E-Mail, Chat Rooms, and Open Meetings

The modern meeting brings new advantages in communication—particularly with the public. But it also brings new pitfalls that can lead to open meetings violations. Just because technology is



convenient does not mean it is prudent when it comes to providing the openness that the public deserves. The following article addresses some of these issues.

### **E-Mail, Chat Rooms, and Open Meetings**

By Philip Sparkes

Director and Assistant Professor of Law  
Local Government Law Center  
Salmon P. Chase College of Law

Modern communication technologies sometimes pose challenges for open records laws. Those technologies present challenges for open meetings acts, too, as shown in the recent case of *Beck v. Shelton*.

*Beck* involved the open meetings provisions of the Virginia Freedom of Information Act. The plaintiffs complained that the mayor, vice-mayor, and three members of the city council of Fredericksburg Virginia “deliberately e-mailed each other in a knowing, willful and deliberate attempt to hold secret meetings, avoid public scrutiny and discuss City business and decide City issues without the input of all the council members and the public.” Both sides agreed that those public officials corresponded with each other by e-mail concerning specific items of public business. They disagreed about whether the exchange was a meeting subject to the act.

At the beginning of its open meetings analysis, the Virginia Supreme Court noted that the use of computers for textual communication takes different forms. In one form it is the functional equivalent of a letter sent by ordinary mail, courier, or facsimile transmission. In this form there may be significant delay between its preparation and its receipt, and there may be additional delay between receipt and reply. In another form textual communication is the functional equivalent of a discussion potentially involving multiple people. Chat rooms and instant messaging are examples. The e-mail at issue in *Beck* fell into the former category. The shortest interval between sending a message and receiving a response was more than four hours; the longest interval was more than two days.

The trial court held that such use of e-mail was a meeting for the purpose of the Virginia act. Because the officials held this meeting in private, without notice to the public and without opportunity for the public to attend, the lower court said this was a violation of the Freedom of Information Act. For the trial court the issue was not the electronic nature of the transmission but the way in which the e-mail was used. The Virginia Supreme Court agreed that the manner of use was dispositive but disagreed that this use constituted a meeting.

There is no question, said the high court, that e-mails fall within the definition of public records. The question was whether they also fell within the definition of a meeting. This turned on whether there was an “assemblage” of members. An assemblage, the court reasoned, “entails the quality of simultaneity.” That quality may be present in a chat room or in instant messaging, but it is not present when e-mail is the functional equivalent of ordinary mail, courier, or

facsimile transmission. Drawing support from another section of the Freedom of Information Act, the court concluded that some electronic communication may constitute a meeting, and some may not. The key difference is the feature of simultaneity.

To reinforce its conclusion, the Virginia Supreme Court cited an opinion of the Virginia Attorney General. That opinion did not address chat rooms or instant messaging, but it did discuss an exchange of e-mails like that in *Beck*. The Virginia Attorney General concluded that this was essentially a form of written communication. Although not binding on it, the court said the opinion was “entitled to due consideration,” particularly where the General Assembly had known of the opinion for five years and had done nothing to change it.

A less permissive approach than that of the Virginia Supreme Court is the one taken by the Washington Court of Appeals in *Wood v. Battle Ground School District*. Wood alleged that school board members violated Washington’s Open Public Meetings Act when they discussed board business by exchanging e-mail over a period of several days.

The Washington court noted that elected officials no longer conduct business solely at in-person meetings. The court said that if face-to-face contact were necessary for a meeting it would be too easy to evade the requirements of an open meetings act. It followed that a definition of meeting that required physical presence of members in the same location would defeat the purpose of the Washington act. Virtual presence is enough. As the Washington Attorney General interprets it, “a meeting occurs if a majority of the members of the governing body were to discuss or consider agency business no matter where that discussion or consideration might occur,” to which the court might add “...and regardless of the particular means used to conduct it.” Thus, the *Wood* court concluded that the exchange of e-mail, even without the feature of simultaneity important to the *Beck* court, could constitute a meeting.

In Kentucky, the Open Meetings Act defines “meeting” as “all gatherings of every kind, including video teleconferences, regardless of where the meeting is held, and whether regular or special and informational or casual gatherings held in anticipation of or in conjunction with a regular or special meeting.” The inclusion of video teleconferences in the definition of meeting reinforces the conclusion that electronic meetings are meetings for the purpose of the Open Meetings Act. One can draw several inferences from KRS 61.826, which grants authority to a public agency to conduct any meeting, other than a closed session, through video teleconferencing. One is that physical presence is not a necessary condition for a meeting for the reasons stated by the *Wood* court. Another, which follows from the rule of statutory construction that the expression of one thing is to the exclusion of another, is that the statute precludes any kind of electronic meeting other than video teleconferencing. Legal authority tends to support this inference.

Because the word “gathering” in the Kentucky definition of meeting is similar to the word “assemblage” on which the Virginia Supreme Court focused on in *Beck*, one might be tempted to infer that simultaneity would be important in Kentucky. After all, the fact that video teleconferencing shares the feature in common with traditional gatherings in person was

probably important to the General Assembly when it enacted KRS 61.826. However, to stop there is to ignore the implications of the serial meetings provision in KRS 61.810(2). A recent open meetings decision, Ky. Op. Atty. Gen. 03-OMD-092, suggests how that provision might apply.

In 03-OMD-092, the Attorney General addressed the situation where less than a quorum of a city council attended a meeting with representatives of bidders on a city contract. Following that meeting, the mayor conducted telephone discussions with at least one absent council member. A citizen asked the Attorney General to declare this a violation of KRS 62.810(1) or (2) which provide:

- (1) All meetings of the members of any public agency at which any public business is discussed or at which any action is taken by the agency shall be public meetings, open to the public at all times...
- (2) Any series of less than quorum meetings, where the members attending one (1) or more meetings collectively constitute at least a quorum of the members of the public agency and where the meetings are held for the purpose of avoiding the requirements of subsection (1) of this section shall be subject to the requirement of subsection (1) of this section. Nothing in this subsection shall be construed to prohibit discussions between individual members where the purpose of the discussion is to educate the members on specific issues.

The Attorney General said that on the facts of this appeal, a series of meetings of less than a quorum occurred:

The Shively City Council, consisting of six members, acknowledges a meeting of the Mayor, three council members, and the two responsive bidders, and a second telephone meeting between the Mayor and at least one absent council member, arguing that a telephone conversation between two members of a public agency should not be considered a meeting. We agree that, standing alone, a single telephone conversation between two members of a public agency cannot be said to constitute a violation of the Open Meetings Act. Where, however, that telephonic meeting follows an earlier less-than-quorum meeting of the members of a public agency, and the members attending one or more of the meetings collectively constitute at least a quorum, here four members of the six-member body, that series of less-than-quorum meetings constitutes a violation of KRS 61.810(2) if the meetings “are held for the purpose of avoiding the requirements of [KRS 61.810(1)].” Following these meetings, and with little or no discussion, the city council approved a municipal order awarding a contract to Derrick Manufacturing at its next regular meeting. We find that the record on appeal confirms two of the three elements of the conduct proscribed in KRS 61.810(2) and that the final sentence of that statute, upon which the city council relies as a defense to its actions, did not authorize a series of less-than-quorum discussions of the “alternatives to a given issue about which the [council] has the option to take action.”

Ky. Op. Atty. Gen. 03-OMD-092 at 4. Only the inability to determine whether the participants intended to avoid the requirements of the Open Meetings Act prevented the Attorney General from concluding that a violation of the act occurred.

As 03-OMD-092 shows, simultaneity is not a condition necessary to a violation of the Kentucky Open Meetings Act. In addition, it is easy to see from the *Wood* decision how an exchange of e-mail could substitute for the first (in-person) meeting in 03-OMD-092 and easy to see from the *Beck* decision how an exchange of e-mail could substitute for the second (phone) meeting. Making those substitutions suggests the possibility that an exchange of e-mail among a quorum of members of a public body could constitute a meeting for the purpose of the Kentucky Open Meetings Act.

Hawaii recently addressed this issue using language similar to that used in 03-OMD-092. It said, "The Legislature's intent in enacting the statute was to ensure that the formation and conduct of public policy, i.e., discussions, deliberations, decisions and actions, are conducted openly. The Sunshine Law requires that Committee members discuss Official Business in a meeting, not through position statements circulated outside of a meeting. Stated differently, the forum for 'committee members to record and inform other members of their position on certain matters' is at a properly noticed meeting..." The opinion goes on to say that serial communications "violate, at a minimum, the spirit of the Sunshine Law" and that e-mail "cannot be used to circumvent the spirit or requirements of the Sunshine Law or to make a decision upon a matter concerning Official Business."

[Back to top](#)

## CHAPTER 8 ENDNOTES

---

- <sup>1</sup> K.S.A. § 75-4317(a).
- <sup>2</sup> *Memorial Hosp. Ass'n Inc. v Knutson*, 239 Kan. 663, 669, 722 P.2d 1093 (1986).
- <sup>3</sup> K.S.A. § 75-4318(a).
- <sup>4</sup> A.G. 81-288.
- <sup>5</sup> A.G. 81-258.
- <sup>6</sup> A.G. 85-161.
- <sup>7</sup> A.G. 88-97, 90-69.
- <sup>8</sup> A.G. 93-113, 93-130.
- <sup>9</sup> A.G. 94-157.
- <sup>10</sup> A.G. 82-254
- <sup>11</sup> K.S.A. § 75-4318(g)(1).
- <sup>12</sup> A.G. 97-41, 97-40, 91-31, 84-50, 79-225.
- <sup>13</sup> *Murray v. Palmgren*, 231 Kan. 524, 646 P.2d 1091 (1982).
- <sup>14</sup> A.G. 86-92.
- <sup>15</sup> A.G. 84-81.
- <sup>16</sup> A.G. 86-84.
- <sup>17</sup> A.G. 93-73.
- <sup>18</sup> A.G. 86-48.
- <sup>19</sup> See A.G. 81-94 (private/parochial school boards); 79-221 (private nursing homes).
- <sup>20</sup> *Memorial Hosp. Ass'n, Inc. v. Knutson*, 239 Kan. 663, 672 (1986).
- <sup>21</sup> A.G. 79-219, 84-10, 79-284, 87-143, 87-188, 88-27, 94-111, 2001-13, 2000-63, 81-288.
- <sup>22</sup> A.G. 80-239, 82-172, 81-253, 82-256, 85-175, 89-149, 94-42, 94-55, 94-93, 94-99, 94-107, 99-64, 2001-02.
- <sup>23</sup> A.G. 2005-3.
- <sup>24</sup> *Coggins v. Pub. Employee Ret. Bd.*, 2 Kan. App. 2d 416, 423, 581 P.2d 817 (1978).
- <sup>25</sup> A.G. 80-197 accessed at <https://ksag.washburnlaw.edu/opinions/1980/1980-197.pdf>.
- <sup>26</sup> A.G. 82-133, 80-148.
- <sup>27</sup> A.G. 82-133, 84-103, 2000-64.
- <sup>28</sup> A.G. 83-173, 86-133, 81-137.
- <sup>29</sup> K.S.A. § 75-4318(b).
- <sup>30</sup> A.G. 93-113; see also K.S.A. § 75-4318(b).
- <sup>31</sup> K.S.A. § 75-4318(b)(3).
- <sup>32</sup> K.S.A. § 75-4318(c).
- <sup>33</sup> A.G. 81-22, 81-15, 86-133.
- <sup>34</sup> A.G. 81-137, 82-141.
- <sup>35</sup> K.S.A. § 75-4318(b)(1).
- <sup>36</sup> K.S.A. § 75-4318(b)(2).
- <sup>37</sup> A.G. 86-133.
- <sup>38</sup> A.G. 83-173.
- <sup>39</sup> A.G. 81-15.
- <sup>40</sup> A.G. 96-14.
- <sup>41</sup> K.S.A. § 75-4318(d).
- <sup>42</sup> A.G. 86-133.
- <sup>43</sup> *Stevens v. City of Hutchinson*, 11 Kan. App. 2d 290, 293, 726 P.2d 279 (1986).
- <sup>44</sup> *U.S.D. No. 407 v. Fisk*, 232 Kan. 820, 826, 660 P.2d 533 (1983).
- <sup>45</sup> K.S.A. § 45-221(a)(21).
- <sup>46</sup> K.S.A. § 75-4318(e).
- <sup>47</sup> K.S.A. § 75-4318(a).
- <sup>48</sup> A.G. 86-176.
- <sup>49</sup> A.G. 86-153, 82-133.
- <sup>50</sup> A.G. 2011-23.

---

<sup>51</sup> A.G. 81-268, 2011-23.

<sup>52</sup> A.G. 81-22.

<sup>53</sup> K.S.A. § 75-4319(a)(1-3).

<sup>54</sup> *State v. U.S.D. No. 305*, 13 Kan. App. 2d 117, 119, 764 P.2d 459, 460 (1988).

<sup>55</sup> A.G. 91-78 (emphasis added).

<sup>56</sup> K.S.A. § 75-4319(b)(1-16). Only the first six subjects apply to local public bodies and are discussed in the text. The remaining topics concern the Kansas Racing Commission, child abuse records, Child Death Review Board, Workers Compensation Advisory Council, and Medicaid Drug Utilization Review Board, Tribal State Gaming Compact, the governor's domestic violence fatality review board, and security matters.

<sup>57</sup> A.G. 87-10.

<sup>58</sup> A.G. 87-169.

<sup>59</sup> A.G. 81-39, 88-25, 80-102.

<sup>60</sup> A.G. 96-61.

<sup>61</sup> K.S.A. § 75-4319(b)(2).

<sup>62</sup> A.G. 92-56; privileged communication is defined in K.S.A. § 60-426; *Pickering v. Hollanbaugh*, 194 Kan. 804, 809, 401 P.2d 891 (1965).

<sup>63</sup> A.G. 86-162.

<sup>64</sup> K.S.A. § 75-4319(b)(3); see K.S.A. § 72-2228(b) concerning school boards.

<sup>65</sup> A.G. 79-125.

<sup>66</sup> K.S.A. § 75-4319(b)(4).

<sup>67</sup> A.G. 88-148; see K.S.A. § 60-3320(4) for the definition of a trade secret.

<sup>68</sup> K.S.A. § 75-4319(b)(5).

<sup>69</sup> K.S.A. § 75-4319(b)(6).

<sup>70</sup> A.G. 89-92.

<sup>71</sup> A.G. 87-91.

<sup>72</sup> K.S.A. § 75-4319(b)(12).

<sup>73</sup> K.S.A. § 75-4317(b).

<sup>74</sup> K.S.A. § 75-4319(c).

<sup>75</sup> A.G. 93-55.

<sup>76</sup> *O'Hair v. U.S.D. No. 300*, 15 Kan. App. 2d 52, 805 P.2d 40 (1990).

<sup>77</sup> *City of Topeka v. Watertower Place Dev. Grp.*, 265 Kan. 148, 959 P.2d 894 (1988).

<sup>78</sup> A.G. 86-143.

<sup>79</sup> *Id.*; A.G. 92-56.

<sup>80</sup> A.G. 87-170.

<sup>81</sup> A.G. 92-56.

<sup>82</sup> *Hinsdale v. City of Liberal*, 961 F. Supp. 1490, 1494 (1997).

<sup>83</sup> *State v. U.S.D. No. 305*, 13 Kan. App. 2d 117, 764 P.2d 459 (1988).

<sup>84</sup> This form is adapted from Johnson County DA Form 12-85 – Revised 11/16 by Larry Baer and the League of Kansas Municipalities.

<sup>85</sup> K.S.A. § 75-4319(b) lists the available exceptions to the Open Meetings Act for executive sessions. The exceptions listed here are those most likely to be used by a county.

<sup>86</sup> K.S.A. § 75-4320.

<sup>87</sup> *Stoldt v. City of Toronto*, 234 Kan. 957, 963, 678 P.2d 153 (1984).

<sup>88</sup> *Stevens v. Reno Cty. Comm'rs*, 10 Kan. App. 2d 523, 526, 710 P.2d 698 (1985); see also *Olathe Hosp. Found., Inc. v. Extencicare, Inc.*, 217 Kan. 546, 539 P.2d 1 (1975).

<sup>89</sup> *Stoldt*, 234 Kan. at 963.

<sup>90</sup> K.S.A. § 75-4320a(a).

<sup>91</sup> K.S.A. § 75-4320a(f).

<sup>92</sup> K.S.A. § 75-4320a(b).

<sup>93</sup> K.S.A. § 75-4320a(c) and (d).

<sup>94</sup> *Murray v. Palmgren*, 231 Kan. 524, 536-37, 646 P.2d 1091 (1982).

<sup>95</sup> A.G. 80-168.

---

<sup>96</sup> *Unger v. Horn*, 240 Kan. 740, 732 P.2d 1275 (1987); *but see* K.S.A. § 25-4302 as amended in 2003 as the grounds for recall have changed and *Unger* may have been overturned by legislative action.

## CHAPTER 9: KANSAS OPEN RECORDS ACT (KORA)

### ARTICLE 1: SCOPE AND PURPOSE OF KORA

#### 9.1.1 Intent of the Law

The legislature has declared that public records should be open for inspection by any person, unless a law closes the record to the public.<sup>1</sup> The law that states this principle, K.S.A. § 45-215 *et seq.* provides the framework for access to public records. It provides a presumption in favor of disclosure, and the KORA is to be liberally construed. The Kansas Supreme Court has stated:

The Kansas Open Meetings Act...and KORA were passed by the legislature to ensure public confidence in government by increasing the access of the public to government and its decision-making processes. This increases the accountability of governmental bodies and deters official misconduct.<sup>2</sup>

[Back to top](#)

#### 9.1.2 Public Record Defined

A “public record” is defined by statute as “any recorded information, regardless of form, characteristics or location, which is made, maintained or kept by or is in the possession of any public agency or any officer or employee of a public agency pursuant to the officer’s or employee’s official duties.”<sup>3</sup> This definition was amended by the legislature in 2016 in response to an Attorney General opinion suggesting that public employees using their private device and private email to discuss matters related to public functions, activities, programs, or operations were not considered public records.<sup>4</sup> As a result of the amendments to the definition, it is now clear that information on private devices can also be a public record.

The KORA excludes certain documents from the definition, a list that now stands at 55 exceptions.<sup>5</sup> Records owned by private persons that are unrelated to a governmental function, are not public records.<sup>6</sup> Neither are records made, maintained, or kept by a legislator or members of a governing body.<sup>7</sup> This statute also provides that employers’ records regarding individually identifiable contributions made on behalf of employees for worker’s compensation, social security, unemployment insurance, or retirement are not public records.<sup>8</sup>

Throughout the years the Kansas Attorney General has stated that a public agency is not required to create a document or prepare a document in a certain form for someone requesting particular information.<sup>9</sup> The court has further said that deleting confidential information or extracting requested information from a public record does not constitute creating a new record.<sup>10</sup>

[Back to top](#)



### **9.1.3 Public Agency Defined**

A “public agency” is defined as the state or any political or taxing subdivision, or any office, or agency thereof, or any other entity which receives or expends and is supported in whole or part by public funds.<sup>11</sup> The 2005 legislature added a new section specifically including not-for-profit corporations if they receive more than \$350 annually in public funds.<sup>12</sup> Although this section is directed at financial accountability, it does make clear that not-for-profits are covered by KORA even with a nominal contribution of public funds. Excluded from the statutory definition are judges and vendors who sell goods or services to the government.<sup>13</sup> Although documents filed with the district courts are public records, they do not fall under the provisions of KORA.

The Attorney General has opined that a public agency may not close a public record by contract because such a contractual term is void as against public policy.<sup>14</sup> For example, a public body cannot enter into a confidential settlement agreement.<sup>15</sup> The district court in Osage County came to the same conclusion in determining a settlement agreement, which included a confidentiality clause, was an open record even though the County’s insurer negotiated the settlement. The court reasoned that, because the County had signed off on the dismissal of the suit that resulted in the agreement, the County was a party and the settlement was not an exception under K.S.A. § 45-221(a).<sup>16</sup> The Saline County district court used similar reasoning to open a confidential settlement agreement with a former city employee that was on file with the city.<sup>17</sup> The Attorney General has stated that working papers created, maintained, and in the possession of a private CPA firm whose only connection with the public entity is a service contract are not subject to disclosure.<sup>18</sup>

[Back to top](#)

### **9.1.4 Certain Use of Records Prohibited**

The KORA provides that a list of names and addresses shall not be obtained from public records for the purpose of selling or offering for sale any property or service to the persons listed (i.e., commercial solicitation).<sup>19</sup> This provision pertains to the names and addresses of businesses, as well as individuals.<sup>20</sup>

A public agency may require persons requesting a list of names and addresses to provide written certification that they will not use the information for the prohibited commercial purpose.<sup>21</sup> This written certification should be limited to records that contain both names and addresses, based on A.G. 2009-18. In this particular opinion, the AG noted that a county could not require the written certification for a request of parcel numbers and real property valuations because names and addresses were not revealed from the request.

The statute provides civil penalties for any person (including a records custodian) who knowingly sells, gives, or receives public records for the prohibited commercial solicitation purposes.<sup>22</sup> This provision clarifies that a records custodian who obtains a written certification from a records requester and in good faith grants access to or copies of records shall not be liable if the requester uses the information for prohibited purposes.<sup>23</sup> Thus, requiring the

written certification for records containing names and addresses should be standard practice for county records to prevent liability.

The Attorney General has issued several opinions regarding the use of public records for commercial solicitation. This prohibition cannot be circumvented individually; a third party who obtains public record information from the person who made the records request also violates the law if it is used for commercial purposes. For example, the law prohibits a newsletter from obtaining a list of names and addresses from public records and then publishing the list for its subscribers to solicit the listed persons.<sup>24</sup> Use of information obtained from public records to publish land-ownership maps and ownership-product documents does not violate the law.<sup>25</sup>

[Back to top](#)

## **ARTICLE 2: ACCESS, COPIES, PROCEDURES**

### **9.2.1 Access to Records**

Each county, and every public agency in Kansas, must adopt procedures for granting access and obtaining copies of public records.<sup>26</sup> Public agencies must also appoint a local Freedom of Information Officer (FIO).<sup>27</sup> The FIO has several statutory duties: (1) prepare and provide educational materials concerning KORA; (2) assist the public in resolving KORA disputes; (3) respond to any questions about KORA; and (4) prepare a brochure about KORA.<sup>28</sup> The Kansas Association of Counties has brochures that satisfy the requirements of the statute. When possible, the FIO is not the same as the official custodian of the records as the FIO helps facilitate record requests in cases when problems arise with the custodian. Often the attorney in a public agency serves as the FIO.

The Kansas statute regarding access to public records spells out the duties and responsibilities of the records custodian.<sup>29</sup> The official custodian is “any officer or employee of a public agency who is responsible for the maintenance of public records” and the custodian is any person designated by the official custodian to carry out the duties prescribed by the KORA.<sup>30</sup>

No public records can be removed from the agency without written permission of the records custodian. Each agency must make suitable facilities available for persons to inspect records during regular office hours.<sup>31</sup>

A custodian must act upon a request for access to public records as soon as possible, but not later than the end of the third business day following the date the request was received.<sup>32</sup> Many people interpret this provision to mean they have three business days to fill the request – that is not what the law says. It says *as soon as possible* – the third business day is the *latest* date the request can be acted upon.

If access is not granted immediately, the custodian must give a detailed explanation for the delay and the place and time the record will be available for inspection. If the request for access is denied, the custodian must provide, upon request, a written statement of the legal grounds for denial.<sup>33</sup>

If the custodian has any questions whether access should be given to a record, she should check with her county counselor or county attorney. The attorney can also assist in preparing a response if the request is denied.

An agency may require the following: (1) payment of fees in advance; (2) that the request is in writing; and (3) proof of the requester's identity.<sup>34</sup> The law also states that a custodian may refuse to provide access to records if the request "places an unreasonable burden in producing public records or...if repeated requests are intended to disrupt other essential functions of the public agency."<sup>35</sup> Very rarely will any request fall within this exception. The burden of proving that a request is an unreasonable burden or disruptive will be on the custodian if the matter goes to court.

[Back to top](#)

### **9.2.2 Copies of Records and Fees**

The KORA provides that persons not only have the right of access to public records, but that any person may make abstracts or obtain copies of public records. The act clearly states that copies are to be made while they are in the possession, custody, and control of the custodian and under the custodian's supervision.<sup>36</sup> Ideally, copies are to be made where the records are departmentalized. If that is not possible, the custodian may make arrangements to use other facilities.

A public agency is not required to provide copies of radio or recording tapes or discs, videotapes or films, pictures, slides, graphics, illustrations, or other similar items *unless* the items were shown or played at a public meeting. However, a public agency is not required to make a copy (and should not do so) if the item is copyrighted.<sup>37</sup>

The KORA was originally enacted into law before the widespread use of computers by governmental agencies.<sup>38</sup> Computerized records are treated the same as paper public records. The Attorney General has issued several opinions in regard to computerized records. Computerized public information must be provided in the form requested if the public agency has the capability of producing that form. An agency is not required to acquire or design a special program to produce information in a desired form, but may allow an individual who requests such information to design or provide a computer program to obtain the information in the desired form.<sup>39</sup> For example, if a county's voter registration list is computerized, the county election officer must produce the list on a flash drive or in some other computer readable form, rather than in the form of a computer printout, if the agency has the capability of providing the information in that format.<sup>40</sup>

In A.G. 2009-14 the Attorney General said that a county may enter into a contract with a private company to provide remote computer access to copies of county records; however, such a contract does not relieve the county from its requirements under KORA to provide public access to the same records in a format requested by the public. The private company is not bound by KORA (which applies to public agencies) and can charge prices beyond actual costs of producing the copies.<sup>41</sup> The duty to redact any personal information from the public record remains with the records custodian—the county—and does not shift to the private company.<sup>42</sup>

Agencies are authorized by law to charge reasonable fees to recoup their costs in providing access to and copies of records.<sup>43</sup> The fees cannot exceed the actual cost of furnishing copies—including the cost of staff time to make the information available. In the case of records on computer, the fees can only include the cost of the computer services and the staff time involved in producing the information.<sup>44</sup> A higher authority must approve fees established by individual state agencies.<sup>45</sup> For agencies within the executive branch of government, a copy charge of \$0.25 per page or less is presumed to be reasonable.<sup>46</sup> There is no authority to approve local access fees; the only requirement is that such fees be reasonable. In 1987, the Attorney General said that a \$0.20 per page fee charged by a school district was not unreasonable as it reflected actual costs.<sup>47</sup> A public agency may require advance payment of fees before providing access or copies.<sup>48</sup> Fees collected by county officers must be remitted to the county treasurer who then deposits and credits the amount to the general fund.<sup>49</sup>

[Back to top](#)

### **9.2.3 Open Records Requests and Procedures**

KORA requires each public agency to adopt procedures for responding to records requests.<sup>50</sup> The procedures manual should ensure “full access to public records, protect public records from damage and disorganization, prevent excessive disruption of the agency’s essential functions, provide assistance and information upon request, and ensure efficient and timely action in response to applications for inspection of public records.”<sup>51</sup> The manual should include the name(s) of the records custodian(s), business hours, fee schedule, procedures for requesting access, and forms.<sup>52</sup> The county should follow the same procedures for all requests to avoid any allegations of unfairness or favoritism, and to establish a routine that protects the county from legal liability.

A custodian should always be available during business hours. An agency may require a request to be in writing but cannot require any more information than the requester’s name, address, and the desired records. If the requester is obtaining a list of names and addresses, the custodian can, and should, obtain certification that the information will not be used for solicitation purposes. The KORA states that access to records cannot be denied or delayed because the request is technically flawed, unless it is impossible to determine what records are desired.<sup>53</sup> Best practices require asking courteous questions of the requestor if you are unsure as to what records they are requesting, as a simple conversation may clarify what records are desired.

[Back to top](#)

## ARTICLE 3: EXCEPTIONS

### 9.3.1 Records Closed by Law

The presumption is that all records of a public agency are open to the public. KORA provides, however, that if a federal law, state law, Supreme Court Rule, or a legislative rule mandates that a record be kept confidential, that record is *not* subject to KORA disclosure.<sup>54</sup> For example, tax returns, ballots, expunged criminal records, and child abuse records are closed by Kansas law and are not open to the public. The Attorney General has opined that an individual does not have the right to inspect every record that bears his or her name if by law that record is closed to the public.<sup>55</sup> Note that probable cause affidavits in support of a warrant are governed by a separate statute, K.S.A. § 22-2302, and requires filing a request with the court.

It is important to know and keep abreast of the laws that your agency carries out or enforces. If the law demands confidentiality, then the county should not disclose the records under KORA. If a document contains both confidential and public information under KORA, the county must redact the confidential portion and make the rest of the record available to the requester.<sup>56</sup>

[Back to top](#)

### 9.3.2 Records an Agency has Discretion to Disclose

K.S.A. § 45-221(a) lists records that public agencies need not disclose. The public agency has discretion whether to make these records available for public inspection.<sup>57</sup> Many of these records are specific to certain agencies and receive no discussion here. There are, however, some discretionary records common to local government.

Because a public agency *can* release these records, it is important to determine whether there is any legitimate reason not to release the record. If there is no solid legal reason to deny the record, such as protecting a person's privacy or preventing a lawsuit, then the county should release the record to promote open government.

One important exception to KORA is personnel records, performance ratings, or individually identifiable records pertaining to employees or applicants for employment—these are not records for disclosure.<sup>58</sup> The main legal reason supporting this exception is the protection of employee privacy. “Personnel” means employees. True independent contractors are not personnel, though counties must ensure contractors are not actually misclassified employees.<sup>59</sup> Note that the law also states that the names, positions, salaries, lengths of service of public officers, and employees and employment contracts are public records for disclosure upon request.<sup>60</sup> A.G. 2010-3 determined that salary does not include accrued but unpaid vacation or sick leave. Records of payments made to employees for vacation or sick leave are open records, however.

In an earlier opinion, the Attorney General stated that if a public agency creates an employee directory containing the names and addresses of employees taken from personnel files, the agency has created a new public record. Thus, the directory is a public record available for

disclosure.<sup>61</sup> One qualifier, however, is K.S.A. § 45-221(51), which the 2012 Legislature altered to exclude law enforcement, prosecutors, and judges from any such disclosure. KAC has created additional guidance on how to maneuver the discretionary disclosure laws. Contact KAC for more information via e-mail: [info@kansascounties.org](mailto:info@kansascounties.org).

Also, under the list of records for discretionary disclosure are “letters of reference or recommendation pertaining to the character or qualifications of an identifiable individual.” A county may keep these records confidential unless the individual is selected to fill a vacant elected office.<sup>62</sup> An agency may refuse to disclose an individual’s specific test scores on employment tests and examinations, but records that show only passage or failure are open for disclosure upon request.<sup>63</sup>

Another type of discretionary record includes records containing information of a personal nature when public disclosure of the document would constitute a “clearly unwarranted invasion” of an individual’s personal privacy.<sup>64</sup> In 2005, the Kansas Supreme Court discussed this topic and stated:

We conclude that where balancing the privacy interests of the individual with the public’s need to know or, more specifically, where disclosure of the personal or private information fails to significantly serve the principal purpose of the KORA, nondisclosure is favored if such nondisclosure complies with other requirements of KORA.<sup>65</sup>

The Kansas Legislature also added a definition of “clearly unwarranted invasion of personal privacy” to K.S.A. § 45-217: “revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate concern to the public.” The attorney general addressed this change in A.G. 06-8. It is unclear how this change affects prior opinions. For example, the Attorney General has said that a law enforcement agency may decline, in certain circumstances, to reveal the name, address, and phone number of a victim of a sex crime contained on the first page of the standard offense report, which is a public record.<sup>66</sup> Similarly, a public library may refuse to disclose patron and circulation records that pertain to identifiable individuals<sup>67</sup>—though the USA PATRIOT Act may override this exemption.<sup>68</sup>

Notes, preliminary drafts, memoranda, recommendations, or other such documents fall under the discretionary disclosure list. But this exemption does not apply if the agency discusses or cites the document.<sup>69</sup> For example, a memorandum from the county administrator sent to each county commissioner can remain confidential. If, however, the commissioners discuss the memo at a public meeting, the county must disclose the document upon request.

An agency has discretion to keep confidential correspondence between the agency and a private individual. But a letter that gives “notice of any action, policy or determination relating to any regulatory, supervisory or enforcement responsibility of the public agency” must be available for public inspection.<sup>70</sup>

Several records on the discretionary list relate to competitive bids. An agency need not: (1) disclose bid specifications until the agency officially approves them; (2) release sealed bids and related documents until a bid is accepted or all bids rejected; (3) engineering and architectural estimates made by or for any public agency relative to public improvements; or (4) financial information submitted by contractors in qualification statements to any public agency.<sup>71</sup>

The KORA contains several provisions specific to law enforcement agencies in addition to the changes in K.S.A. § 45-221(51).<sup>72</sup> Records custodians in these agencies should always double check with their supervisor or legal counsel before releasing these types of records. In brief, the KORA provides that public agencies may refuse to disclose criminal investigation records. The Legislature defines “criminal investigation records” as, “every audio or video recording made and retained by law enforcement using a body camera or vehicle camera” as well as records of an investigatory or criminal justice agency, “compiled in the process of preventing, detecting or investigating violations of criminal law.”<sup>73</sup> Some items excluded from the definition are police blotter entries, court records, rosters of inmates, and traffic violations.<sup>74</sup> The agency must disclose these records upon request. Though an agency has discretion to close criminal investigation records, the KORA further provides that a court may order disclosure of the records if certain statutory criteria are met.<sup>75</sup> Additionally, agencies are required to allow certain persons to listen to or view audio or video recordings made by body or vehicle cameras. Individuals allowed to make such requests include, among others, the subject of the recording or the subject’s attorney.<sup>76</sup>

The Attorney General has issued several opinions concerning law enforcement records: charges filed against a person and the scheduled court dates are public information,<sup>77</sup> the roster of jail inmates and the front page of a standard offense report are public records; mug shots are not.<sup>78</sup> A log of breath test machine results is a criminal investigation record,<sup>79</sup> coroner reports are subject to disclosure,<sup>80</sup> records closed by a valid expungement order (records of arrest, conviction, or incarceration) may only be disclosed as provided in K.S.A. § 21-6614(i). But other records relating to the expunged crime, such as the criminal investigation file, may be opened.<sup>81</sup> The incident based reporting system code sheet is a public record that must be disclosed.<sup>82</sup> Court records of public judicial proceedings that contain sentencing information and guilty or not guilty findings must be open to the public.<sup>83</sup> A diversion agreement entered into by a city prosecutor and a first-time DUI offender is open to the public.<sup>84</sup> A criminal justice agency may discretionarily disclose individual conviction records upon request.<sup>85</sup> As demonstrated in this section, there are many considerations relating to law enforcement records. It is necessary to regularly seek KORA training to ensure your county is following current law.

[Back to top](#)

### **9.3.3 Combined Confidential and Public Information**

Property value and assessment records may contain both public and confidential information. The Attorney General has issued open records opinions on the following: taxpayer’s financial information submitted to determine property value for taxation;<sup>86</sup> appraiser and board of



equalization records relating to property identification and appraisal;<sup>87</sup> real estate sales-validation questionnaires;<sup>88</sup> questionnaire information requested during administrative proceedings or appeals;<sup>89</sup> and data bases maintained by the appraiser's office.<sup>90</sup> Appraisers and records custodians may wish to review these opinions.

The fact that a record contains information not required to be disclosed does not necessarily close the entire record. Rather, the agency must delete that portion and make available the material in the public record that is subject to disclosure.<sup>91</sup> Further, the KORA specifically states that if a record contains information concerning an identifiable individual that is not required to be disclosed, the public agency must delete the identifying portions of the record and make any remaining portions of the record available to a requester. The Kansas Supreme Court stated, "[t]he KORA does not specifically mention who is to bear the cost of redaction. It does, however, make clear the legislative intent that actual costs of furnishing copies of public records may be recovered by the agency and that the person seeking the records should bear the actual expense."<sup>92</sup> Statistical information descriptive of no identifiable person is always open for public review. Finally, if a record exempt from disclosure has existed for 70 years or more, the record must be open to the public unless otherwise specified by law.<sup>93</sup>

[Back to top](#)

#### **9.3.4 Old Records and Retention**

The Kansas State Historical Society (KSHS) serves as the manager of historical government records and, in that role, the KSHS determines record retention schedules and the manner in which government records are stored or destroyed.<sup>94</sup> The records act covers most local records, but certain election records are covered in the election statutes.<sup>95</sup>

The Kansas State Historical Society has online information to help local governments determine their record retention policies. The *Local Records Management Manual* is available at [www.kshs.org/government/records/localgovt/index.htm](http://www.kshs.org/government/records/localgovt/index.htm). KSHS also has record retention schedules for all county offices at [www.kshs.org/p/retention-schedules/11368](http://www.kshs.org/p/retention-schedules/11368). These schedules contain descriptions of various county records, how long to retain them, and how to dispose of them. All county offices must adhere to the established retention schedules.<sup>96</sup> KSHS recommends forming a County Records Board to implement a records plan. The organization recommends including the County Clerk, Register of Deeds, County Treasurer, one or more Commissioners, County Counselor, and a representative from the County Historical/Genealogical Society.<sup>97</sup>

Aside from these general laws relating to county records, the Board may, by resolution, provide for and authorize any county officer to photograph, microphotograph, digitally store, or reproduce any records, papers, or documents in the officer's custody for the purpose of storing documents more efficiently or safely. Court records are exempt from this provision. The photographic film, prints, or reproductions must conform to specific statutory standards.<sup>98</sup>

[Back to top](#)



### 9.3.5 Information Resources

The most up-to-date source of information concerning the KORA is available from the Attorney General's Office at [www.ag.ks.gov/open-government](http://www.ag.ks.gov/open-government). The website also has links to the AG's guidance on KORA and KOMA policies.

The Kansas Association of Counties and League of Kansas Municipalities monitor changes in the statutes and have additional interpretive materials and brochures.

[Back to top](#)

## ARTICLE 4: ENFORCEMENT OF THE KORA

### 9.4.1 Reporting of Complaints

The county or district attorney of each county must annually report to the attorney general all complaints received during the preceding fiscal year concerning KORA and the Kansas Open Meeting Act (KOMA) violations and the disposition of each complaint. The attorney general will then compile the information with the attorney general's office's investigations of KORA and KOMA violations. The attorney general annually publishes a list of information with the names of the public agencies that are the subject of complaints and investigations.<sup>99</sup>

[Back to top](#)

### 9.4.2 Enforcement

The Kansas district courts have jurisdiction to enforce the KORA.<sup>100</sup> The remedies to enforce the act, mandamus, or injunction are civil, not criminal. Any person may bring the action. The Act allows either the attorney general or the county or district attorney to file the action. The courts are directed to assign KORA actions to the earliest hearing and trial dates possible. The burden is on the agency to prove that the record in question is exempt from disclosure.<sup>101</sup> The court awards the plaintiff attorney fees if it finds that the agency's denial of access to the record was unreasonable and not in good faith. This includes attorney's fees upon appeal as well.<sup>102</sup> Any public agency subject to KORA that knowingly violates any provision of the act or intentionally fails to furnish information as required is liable for payment of a civil penalty up to \$500 for each violation.<sup>103</sup> If the agency is the prevailing party, the court will award attorney fees if the court finds that the action was unreasonable and not in good faith.<sup>104</sup>

[Back to top](#)

## CHAPTER 9 ENDNOTES

- 
- <sup>1</sup> K.S.A. § 45-216(a); *see also* *Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407, 416, 997 P.2d 681 (2000).
- <sup>2</sup> *SRS v. Pub. Emp. Relations Bd.*, 249 Kan. 163, 170, 815 P.2d 66 (1991).
- <sup>3</sup> K.S.A. § 45-217(j)(1); *State v. Stevens*, 26 Kan. App. 2d 606, 992 P.2d 1244, 1247 (1999). Information published on the internet is also subject to the definition of a public record.
- <sup>4</sup> A.G. 2015-10.
- <sup>5</sup> K.S.A. § 45-221.
- <sup>6</sup> K.S.A. § 45-217(l)(3)(A).
- <sup>7</sup> K.S.A. § 45-217(l)(3)(B).
- <sup>8</sup> K.S.A. § 45-217(l)(3)(C).
- <sup>9</sup> A.G. 86-43, 93-126.
- <sup>10</sup> *Stephan v. Harder*, 230 Kan. 573, 583, 641 P.2d 366 (1982).
- <sup>11</sup> K.S.A. § 45-217(i)(1) *see* A.G. 93-130 and 94-111. (The Turnpike Authority and Southwest Development Services, Inc. are public agencies).
- <sup>12</sup> K.S.A. § 45-240.
- <sup>13</sup> K.S.A. § 45-217(k)(2)(A)-(B).
- <sup>14</sup> K.S.A. § 45-217(k)(1); A.G. 91-116.
- <sup>15</sup> K.S.A. § 45-217(l)(1); A.G. 93-55.
- <sup>16</sup> Osage County District Court Case No. 97-C-87 (1998).
- <sup>17</sup> Saline County District Court Case No. 86-C-383.
- <sup>18</sup> A.G. 91-157.
- <sup>19</sup> K.S.A. § 45-220(c)(2)(A).
- <sup>20</sup> A.G. 87-73.
- <sup>21</sup> K.S.A. § 45-220(c); A.G. 87-137.
- <sup>22</sup> K.S.A. § 45-230(b). Exceptions to prohibited conduct are listed in this statute. *See*, A.G. 85-34, 84-130, 84-106, 84-45.
- <sup>23</sup> K.S.A. § 45-230(c).
- <sup>24</sup> A.G. 86-1.
- <sup>25</sup> A.G. 86-39, 89-47.
- <sup>26</sup> K.S.A. § 45-220(a).
- <sup>27</sup> K.S.A. § 45-226.
- <sup>28</sup> *Id.*
- <sup>29</sup> K.S.A. § 45-218.
- <sup>30</sup> K.S.A. § 45-217(d) and (e); A.G. 90-89.
- <sup>31</sup> K.S.A. § 45-218.
- <sup>32</sup> K.S.A. § 45-218(d).
- <sup>33</sup> *Id.*
- <sup>34</sup> A.G. 92-28.
- <sup>35</sup> K.S.A. § 45-218(e).
- <sup>36</sup> K.S.A. § 45-219(b).
- <sup>37</sup> K.S.A. § 45-219 (a).
- <sup>38</sup> K.S.A. § 40-3401 *et seq.* became law on July 1, 1984.
- <sup>39</sup> A.G. 89-106, 87-137.
- <sup>40</sup> A.G. 88-152.
- <sup>41</sup> A.G. 2009-14.
- <sup>42</sup> *Id.*
- <sup>43</sup> K.S.A. § 45-219(c).
- <sup>44</sup> *Data Tree, LLC v. Meek*, 109 P.3d 1226, 1239 (Kan. 2005).
- <sup>45</sup> K.S.A. § 45-219(c)(3-5).
- <sup>46</sup> K.S.A. § 45-219(c)(5).
- <sup>47</sup> A.G. 87-4.

---

<sup>48</sup> K.S.A. § 45-218(f).  
<sup>49</sup> K.S.A. § 45-219(e).  
<sup>50</sup> K.S.A. § 45-220.  
<sup>51</sup> K.S.A. § 45-220(a).  
<sup>52</sup> K.S.A. § 45-220(d), (e) and (f).  
<sup>53</sup> K.S.A. § 45-220(b).  
<sup>54</sup> K.S.A. § 45-221(a)(1).  
<sup>55</sup> A.G. 85-105.  
<sup>56</sup> K.S.A. § 45-221(d).  
<sup>57</sup> K.S.A. § 45-221(a).  
<sup>58</sup> K.S.A. § 45-221(a)(4). Discussed in A.G. 87-10; 88-61; 90-136; 91-50; 91-127; 97-52; 00-8; 06-8.  
<sup>59</sup> A.G. 87-10, 87-169, 91-127, 99-55; *see Southwest Anesthesia Serv., P.A. v. Southwest Med. Ctr.*, 23 Kan. App. 2d 950, 937 P.2d 1257 (1997).  
<sup>60</sup> K.S.A. § 45-221(a)(4); A.G. 89-106.  
<sup>61</sup> A.G. 89-106.  
<sup>62</sup> K.S.A. § 45-221(a)(6).  
<sup>63</sup> K.S.A. § 45-221(a)(9).  
<sup>64</sup> K.S.A. § 45-221(a)(30).  
<sup>65</sup> *Data Tree*, 109 P.3d at 1238.  
<sup>66</sup> A.G. 92-149.  
<sup>67</sup> K.S.A. § 45-221(a)(23).  
<sup>68</sup> USA PATRIOT Act of 2001, Pub.L. No. 107-56.  
<sup>69</sup> K.S.A. § 45-221(a)(20); *see Dept. of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 10 (2001).  
<sup>70</sup> K.S.A. § 45-221(a)(14).  
<sup>71</sup> K.S.A. § 45-221(a)(27), (28), (32), and (33).  
<sup>72</sup> K.S.A. §§ 45-217(e), (m), 45-221(a)(5), (10) and (29).  
<sup>73</sup> K.S.A. §§ 45-217(e)(1)-(2), 45-221(a)(10).  
<sup>74</sup> *Id.*  
<sup>75</sup> K.S.A. § 45-221(a)(10) (A-F); *Harris Enters., Inc. v. Moore*, 241 Kan. 59, 734 P.2d 1083 (1987); *see also Kansas Racing Mgmt., Inc. v. Kansas Racing Comm'n* 244 Kan. 343, 770 P.2d 463 (1989).  
<sup>76</sup> L. 2016, ch. 82, sec. 1(b)-(c).  
<sup>77</sup> A.G. 87-145.  
<sup>78</sup> A.G. 87-25.  
<sup>79</sup> A.G. 87-63.  
<sup>80</sup> A.G.86-5; K.S.A. § 22a-232.  
<sup>81</sup> A.G. 92-27.  
<sup>82</sup> A.G. 93-9.  
<sup>83</sup> A.G. 93-103.  
<sup>84</sup> A.G.94-7.  
<sup>85</sup> A.G. 94-9.  
<sup>86</sup> A.G. 89-118.  
<sup>87</sup> A.G. 91-145.  
<sup>88</sup> A.G. 92-38.  
<sup>89</sup> A.G.94-96.  
<sup>90</sup> A.G. 94-104.  
<sup>91</sup> K.S.A. § 45-221(d).  
<sup>92</sup> *Data Tree*, 109 P.3d at 1239-40.  
<sup>93</sup> K.S.A. § 45-221(f).  
<sup>94</sup> *See* The Public Records Act at K.S.A. § 75-3502 *et seq.* and The Government Records Preservation Act, K.S.A. § 45-401 *et seq.*  
<sup>95</sup> K.S.A. §§ 25-2708, 25-2709.  
<sup>96</sup> *Records Retention and Storage*, Justin Dragosani-Brantingham.  
<sup>97</sup> *Id.*

---

<sup>98</sup> K.S.A. § 19-250.

<sup>99</sup> K.S.A. § 75-753.

<sup>100</sup> K.S.A. § 45-222.

<sup>101</sup> *SRS v. Pub. Employee Relations Bd.*, 249 Kan. 163, 170, 815 P.2d 66 (1991); *Wichita Eagle and Beacon Pub. Co. v. Simmons*, 274 Kan. 194, 209, 50 P.3d 66 (2002).

<sup>102</sup> K.S.A. § 45-222(d); *see Telegram Pub. Co v. KDOT*, 275 Kan. 779, 69 P.3d 578 (2003).

<sup>103</sup> K.S.A. § 45-223.

<sup>104</sup> K.S.A. § 45-222(e).

## CHAPTER 10: COUNTY FINANCIAL STRUCTURE

### ARTICLE 1: BUDGETING

#### Budgets Generally

Development, consideration, public presentation, and adoption of the annual county budget encompass the single most important responsibility for the Board—governing the taxpayers’ monies. The county’s annual budget is its principal statement of policy because it conveys the organizational direction, priorities, and commitment of community resources. While the county’s annual budget carries legal significance for a specific fiscal year, it ideally provides for implementation of broad, long-term policy objectives. There are two types of county budgets: the operating budget and the capital budget. The operating budget sets the work program of the county for the coming year and identifies how the county will fund the work program. The capital budget explains the capital improvements set for action in the next year and –ideally—in the several following years. It also identifies how the county will fund the capitol improvement projects.

The budget establishes the work program and financial plan of the county for the coming year. Preparation and adoption of the budget provides the primary opportunity for the county to evaluate its current services, measure and compare needs for different services, and balance public service needs against the tax and revenue burden required to finance them. Its purpose is more than filling out forms to comply with state law and more than an exercise to determine what the property tax levy should be. The budget guides and plans *what* the Board will accomplish, along with the human, capital, and financial means to do so!

[Back to top](#)

#### 10.1.1 The Structure of County Budgets and the Kansas Budget Law

The building block for county budgets (as well as most other governmental budgets) is the fund. A fund is a municipal accounting entity, similar to a checkbook, with a self-balancing set of accounts—including cash, revenues, and expenditures. Each fund has its own budget. The General Fund is the principal operating fund of every county; the money in the General Fund “checkbook” can be used for any legal purpose. This is supported by K.S.A. § 79-1946, which states: “The board of county commissioners of each of the several counties is hereby authorized to fix a rate of levy annually for current expenses of the county...”

Kansas laws authorize counties to establish a variety of other funds to account for specific activities and to levy taxes that are dedicated to those activities. The money in the “checkbooks” of other funds can be used only for specific purposes and are subject to special limitations as outlined in the statutes authorizing the creation of the fund. The financial records of the county clerk and county treasurer show the receipts and expenditures of each fund

separately. Yet the county's bank account need not show the funds separately; it is immaterial to a depository bank how many funds the county has or what the balances are in each individual fund. The required segregation of funds may be accomplished in the accounting records of the county.

The county should adopt a budget for each fund. But is important to note that the required steps to adopt or amend the budget are not the same for all funds. The Kansas Budget Law (K.S.A. § 79-2925 *et seq.*) sets a majority of Kansas laws directing the legal requirements for developing and adopting a budget. These statutes outline the legal requirements to adopt or amend a budget for funds subject to the law. The law, in general, outlines the structure of submitting information for submission to the State, public hearing requirements, and limitations on how your budget is developed. The Kansas Budget Law applies to all municipalities, including counties. There are, however, certain taxing subdivisions that are not covered by the budget law, and the statutes authorizing certain funds of the county may specifically exempt them from the provisions of the Budget Law.

The Budget Law does not apply equally to all county funds. Although the county must report all its funds and money in the budget (with the exception of money temporarily held in its fiduciary role as revenue collector/distributor for other units of government), the county may adopt or amend certain budgets without prior notice to citizens and without public hearing. A county may choose its own process for budget adoption and management within these funds. The majority of these exempted funds relate to grant resources, equipment acquisition, and capital construction. The legislature wisely exempted these funds due to the fact that grants often operate on varying fiscal years depending on the grantor, while capital construction may involve multi-year projects that lend a higher degree of difficulty in developing an accurate single year budget. An example of an exempted fund is one created to account for federal grants (K.S.A. § 12-1663).

For funds subject to the Budget Law, the budget provides the county with legal expenditure authority (or 'appropriations') and imposes tax levies or other revenue measures to finance expenditures. Without a budget, there is no authority to spend within the fund. In defining "fund," K.S.A. § 79-2925 specifies that each budgeted line item is not a separate "fund." Rather, the "fund" is the total of all departmental, program, or line-item budgets contained within the fund. The Board must itemize and classify the budget by the particular funds. The budget of each fund must also show the amount that will be raised and expended during the budget year and for the preceding budget year.

The Budget Law provides that—with few exceptions—appropriations in each fund establish the *maximum* expenditures that the county can spend from the fund within the fiscal year (January 1 – December 31). K.S.A. § 79-2934 makes it clear that no fund is allowed "to pay for any indebtedness created in excess of the total amount of the adopted budget of expenditures for such fund." Consequently, the county cannot obligate a fund in a manner that will cause total spending from the fund to exceed its budget for that year. There may be legitimate reasons the maximum authorized budget of a fund becomes inadequate following adoption. In such

instances, the county can amend the budget to authorize additional expenditures. See section 10.1.4 for more information amending budgets.

K.S.A. § 79-2927 requires a balanced budget for each tax fund. Generally, this means expenditures must equal available resources. “Available resources” are the sum of existing cash balances at the start of the year and all revenues that the county will collect during the year. There is, however, some leeway for funds subject to the Kansas Budget Law, as they may contain a non-appropriated balance up to 5% of the total of the fund’s budgeted expenditures and non-appropriated balance. A non-appropriated balance is not a budgeted item within an itemized revenue and expenditure listing. Instead, it designates a balance intended to carry into the next budget year. Counties may use a state budget form for the fund to maintain adequate cash flow and compliance with the Cash Basis Law. (See Article 2 of this chapter for an explanation of the Cash Basis Law.)

The Budget Law limits budgeting for miscellaneous purposes and applies this limitation to both revenues and expenditures within each individual fund. K.S.A. § 79-2927 says that an item for “miscellaneous” purposes cannot exceed 10% of the budget total for the particular fund. Another caveat is reimbursement. If a county itemizes a budget item and it receives a reimbursement after the expenditure, the reimbursement must go to the originating fund to reduce expenditure. This potentially expands a county’s spending authority. If, however, the Board budgeted for the reimbursement, the original budget itemization is the maximum spending authority for the fund. If a fund experiences a surplus, under K.S.A. § 79-2934, “Any balance remaining in such fund at the end of the current budget year shall be carried forward to the credit of the fund for the ensuing budget year.”

A recurring question in local government is whether the Board can use appropriated funds for purposes other than those stated in the budget. Generally, K.S.A. § 79-2934 forbids this practice in its requirement that the Board can only appropriate according to the fund’s purposes. Additionally, the Budget Law states that the Board cannot divert (i.e., transfer) any fund to another fund except as provided by law. For example, the Board may only use monies raised from the Noxious Weed tax levy (K.S.A. § 2-1318) for noxious weed control purposes. The Kansas Legislature has acknowledged, however, that from time to time, even the best efforts of professional staff and elected officials cannot account for the everyday contingencies of local governance. Their collective response to this reality is K.S.A. § 79-2929a, which provides a mechanism for amending a budget after the Board has already enacted and filed the budget.

Since each fund is a separate accounting entity, the complexity of governmental accounting and financial reporting increases as the number of funds increases. The expenditure of funds for *any legal purpose* can be budgeted in a county’s General Fund; therefore, counties should consider consolidating the majority of appropriations in the General Fund. Consolidating funds helps reduce auditing costs and staff time necessary to account for and reconcile transactions. Because of the legal processes required to make some transfers, the Board should consult with the county counselor to ensure compliance with the law.

[Back to top](#)

### 10.1.2 Annual Budget Process and Budget Calendar

As discussed in the previous section, Kansas Budget Law sets the legal requirements for developing and adopting county budgets (K.S.A. §§ 79-2925 to 79-2937). The Director of Accounts and Reports of the Kansas Department of Administration prescribes budget forms to be used in preparing and filing budgets for all counties (<https://admin.ks.gov/offices/accounts-reports/local-government/municipal-services>). Under K.S.A. § 79-2930, each county clerk must submit copies of the budgets of every municipality or taxing subdivision of the state located within the county to the state Director of Accounts and Reports electronically, including an electronic copy of the county's budget. The State updates and publishes the legal budget forms in May, after the Legislature completes its session.

Each fund requires separate budget statements. For funds subject to the Budget Law, counties must show cash, receipts, and expenditures for three years, including: (1) the proposed (ensuing) budget year; (2) the current budget year; and (3) the prior budget year. The county should create the statement in a three-column format with one column per year. Because the prior budget year is the only year that will be wholly complete when the county prepares the annual budget, it is the only column that will have actual financial information. Hence, it is sometimes referred to as the "actual year column." The other two columns for the current and proposed budget years present estimates and proposed figures. For funds not subject to the Budget Law—those funds without an adopted budget requirement—the State only requires information on the Prior Budget Year for the form.

Ultimate responsibility for adopting county budgets rests with the Board. The Board may, however, delegate certain budget development, analysis responsibilities, and other planning tasks to other county officials. Items for delegation often include: (1) preparing a single budget recommendation or proposal; and (2) aggregating or summarizing budget requests from department/agency directors. The Board often relies upon the county clerk, a budget coordinator, administrative assistants, county administrators or managers, other staff members who report directly or indirectly to the Board, or any of the above officials working as a team or in consultation with an outside financial advisor. It is crucial that the commissioners clearly define respective roles in budget preparation. Further, the Board must communicate these roles well in advance of the budget development process.

The Board should work with key county officials to set budget dates in the form of a schedule or calendar. The Board should set the calendar long before deadlines arrive. KAC recommends disseminating the budget calendar to all affected parties—inside and outside the county organization—including agencies seeking county funding and the media. This simple courtesy enables people with a stake in the budget process to plan their schedules and vacations during the summer months. Minimally, the calendar should include the specific dates (and times, if known) of the following actions:

- Public discussion and final action of the Board concerning the parameters for developing budget requests in the ensuing budget year;



- Distribution of budget development forms and instructions to county department directors and outside agencies;
- Due date for submitting budget requests;
- Dates of meetings or budget review sessions with the Board, the budget official designated to prepare and submit a recommended budget (as appropriate), or both;
- The date at which time the Board will authorize publication of the proposed budgets;
- The date of a statutory public hearing on the proposed budget and tax levies with publication in a local newspaper at least ten days prior to the scheduled hearing; and
- The date on which the budget will be adopted by the Board. The budget should be adopted and certified to the county clerk by August 25<sup>th</sup>.

By law, the Board must hold at least one public budget hearing “for the purpose of answering and hearing objections of taxpayers relating to the proposed budget and for the purpose of considering amendments to such proposed budget” before the Board can adopt and certify the annual budget for the county clerk. The county must publish a notice in a daily or weekly newspaper of general circulation throughout the county 10 days before the hearing. The publication must follow the specific format set within the state budget forms.

In practice, it is difficult for ordinary citizens to significantly influence decision making once the date of the public hearing arrives as prescribed in K.S.A. § 79-2929. Thus, the governing Board may choose to include opportunities for “public comment” on the ensuing year’s budget at various times in the weeks and months prior to final adoption of the budget. But note that additional opportunities for “public comment” do not satisfy the statutorily required public hearing described above, and the Board may not take any final action regarding the budget in conjunction with these public comment sessions. Final action to adopt the budget may be taken only after the county has satisfied publication and public hearing requirements. The main point regarding the budget process is to broadly advertise the budgeting process through press releases, the county’s web site, social media, and public announcements. This will be the best approach to bring all interested parties on Board with the county’s goals.

An additional factor in the budgeting schedule includes tax revenue information from the county treasurer and clerk. This data is necessary to complete the budget, and both offices will release important data at various times during the budget process. On May 20, estimates regarding motor, recreational, and 16/20M motor vehicles (trucks weighing more than 12,000 pounds but less than 20,000 pounds) must arrive from the county treasurer. On July 1, the county clerk must provide assessed valuation and other information required to complete the state budget forms.

The Board must certify the budget document to the county clerk by August 25. The Attorney General has, however, opined that all dates prescribed in the Kansas Budget Law are directory, not mandatory. Despite the AG opinion, counties should strive to meet the prescribed dates.

The Board should discuss any potential delays in the budget process with the county clerk in advance of the deadlines.

[Back to top](#)

### **10.1.3 Capital Budgeting**

A capital budget is a plan of proposed long-term spending such as equipment or buildings and the means of financing them during the current fiscal year. It is usually a part of the annual budget. If a county has a multi-year Capital Improvement Program (CIP) process in place, the Capital Budget is the first year of the long-range plan. There is no legal requirement to develop and adopt a capital budget, but it is a sound approach to planning and resource management. Developing a multi-year capital plan will assist a county in prioritizing major projects and maximizing available resources through a thoughtful, transparent, and deliberate process.

[Back to top](#)

### **10.1.4 Budget Amendments**

As a general rule, the governing body can change line-item budgets within a fund during the budget year without formal published amendment of the budget, as long as the Board does not increase the total maximum budget for the fund. These intra-fund changes—reducing the appropriation of one part of the fund budget and making a corresponding increase to another part—are commonly called “budget adjustments” or “budget transfers.” They are not “budget amendments.”

The budget law prohibits the creation of indebtedness against any fund over the maximum budgeted amount for the current year. When the budget is exhausted, further expenditures must cease.

If an emergency arises when unplanned expenditures combine with budgeted expenditures to overextend the original total budget of a fund, the county may amend the budget to increase the maximum allowed expenditure. Although an amended budget cannot increase the property tax levy, it can employ un-appropriated, non-property-tax revenue (cash or unbudgeted revenue) to cover the additional budget needs. For any fund that is subject to the Budget Law, the budget can be amended only by the Board through a process pursuant “to the same publication, notice, and public hearing requirements” required by K.S.A. § 79-2929a for the passage of the original budget. The Board must also file the amended budget with the county clerk and the state Director of Accounts and Reports. The Board must adopt the amended budget prior to December 31.

If cash is unavailable to cover emergency needs, the county may apply to the state Board of Tax Appeals for authority to issue no-fund warrants, which essentially are IOUs or promises to pay at a later date. (See § 15.1.11, No-Funds Warrants). When the state Board of Tax Appeals grants permission to issue no-fund warrants, budget authority to spend the proceeds of the no-fund warrants increases automatically—the county does not have to amend its budget. Counties should consider all other options for managing a budget problem before requesting authorization to issue no-fund warrants.

[Back to top](#)

### 10.1.5 Budget Administration

Budgeting is not a once-a-year activity to be completed and then abandoned until the next budget cycle. The governing body should continually assess the state of the budget and prepare adjustments, as necessary. Although the Kansas Budget Law controls expenditures by fund, counties can use resolutions to implement additional expenditure controls and control systems. The resolutions can govern the transfer of expenditure authority between and among line-item levels or even the department levels within a specific budgeted fund. Absent such intervention, the expenditure control is at the fund level, i.e., the total budget for the fund in a given fiscal year. As such, the budgeted amounts for individual line items can increase if other expenses decrease so that expenditures within the fund are within the total amount budgeted.

Financial obligations—indebtedness—chargeable against an ensuing year’s budget cannot occur without a specific statutory exception. Binding purchase agreements payable in part out of an ensuing year’s budget are improper and illegal. In other words, generally a county cannot buy something this year and charge it against next year’s budget. At the time of the purchase the county must have sufficient unused budget authority against which the county can charge the purchase, and sufficient cash to pay the obligation even if the item will not be delivered or paid for until the following year. Unanticipated purchases within the current budget can be financed by no-fund warrants. Counties may also enter into limited or conditional lease-purchase agreements, as these do not violate the cash basis and budget law. (See § 15.1.10 – Lease Obligations).

[Back to top](#)

### 10.1.6 Reserve and Special Funds

Several statutes provide for reserve and special funds, which are exempted from the Kansas Budget Law. Unlike most other funds, unexpended money in a reserve fund does not demand annual expenditure budgeting. This allows counties to set aside funds periodically for projects that are still several years away from execution. The following is a list of the principal county reserve funds:

- Machinery; Bridges. Two statutes give counties the authority to create a special road, bridge, or equipment fund by providing for the transfer to the special fund of no more than 25-percent of the amount budgeted for standard road purposes.
- Highway Improvements. K.S.A. § 68-589 and K.S.A. § 68-590 authorize counties to establish a special highway improvement reserve fund in the same manner as the machinery fund noted above.
- Workmen’s Compensation. K.S.A. § 44-505b specifically authorizes counties to establish a worker’s compensation reserve fund.
- Risk Management Reserve Funds. K.S.A. § 12-2615 authorizes the governing body to establish risk management reserve funds. Counties may use these funds to cover any risk that would be insurable. Money can be transferred into the funds from any source

that has lawfully been authorized for that purpose, including transfers from the general fund.

- Ambulances. Counties may build up an ambulance fund by an annual levy under K.S.A. §12-110d.
- Special Equipment Fund. K.S.A. § 19-119 permits counties to establish a general municipal equipment reserve fund to finance the acquisition of machinery and equipment, including motor vehicles.
- Capital Improvements Funds. K.S.A. § 19-120 authorizes the creation of a county capital improvements fund to finance current and future capital improvements. Before a county can create this type of fund, the county must formally adopt a multi-year capital improvement plan. The fund can be both a reserve and operating fund.
- Special Bridge Fund. K.S.A. § 68-1135 provides for a special fund for bridges and culverts.
- Noxious Weed Capital Outlay Fund. K.S.A. § 2-1318 permits the transfer from the noxious weed fund to a noxious weed capital outlay fund of any monies remaining at the end of the year.
- Special Liability Expense Fund. K.S.A. §75-6110 authorizes a special liability expense fund to pay costs resulting from the Kansas Tort Claims Act. The fund may serve as an operating fund or a reserve fund. As an operating fund, the county may levy a special property tax for the fund or transfer monies from other existing funds. The special liability expense fund is primarily a reserve if the local unit is self-insuring some or all of its tort liability expense.
- Special Appraisal Fund. K.S.A. § 79-1608 permits the county Board to pass a resolution that transfers, at the end of the year, any balances in the general fund to a special appraisal fund. In addition, K.S.A. § 79-1482 authorizes counties to levy a tax for a special county-wide reappraisal fund.
- Other Special Reserve Funds. K.S.A. § 79-1808 authorizes the levy of taxes to pay special assessments for improvements made by another unit (e.g., a city on county property), which may be used as a special fund. K.S.A. § 79-2925(a)(5) provides for a special recreation facilities fund for a county coliseum.

[Back to top](#)

#### **10.1.7 Federal and State Aid Budgeting**

Counties need not include federal and state aid funds in the adopted county budget, as they are exempted from the Budget Law. Even so, sound financial management dictates the adoption of a budget to guide the use of these revenues. Cash balances or proceeds from temporary notes and no-fund warrants can temporarily finance the federal share of federally assisted programs until the county receives federal reimbursements.

[Back to top](#)

### **10.1.8 Conclusion**

Adoption of an annual budget is one of the most important responsibilities of the Board. Development of an operating and capital budget is time sensitive and requires adherence to the Kansas Budget Law. The General Fund—based on its wide-ranging purpose—serves as the county’s principal operating fund, including everything from legal expenditures to public safety. Most other funds have some special purpose, and only special purpose expenditures may be charged to them. Reserve funds (a type of special purpose fund) do not require annual budgeting under the Budget Law, but good financial management dictates the adoption of a budget to show the plan for their use. The Law requires counties to follow a defined time schedule in adopting the budget, with submission of the adopted version to the county clerk by August 25. Additional information on developing a county budget is available through the Kansas Department of Administration’s Division of Accounts and Reports through an instruction manual titled, “Budgeting for Kansas Municipalities.” For additional information regarding budgets see <http://www.da.ks.gov/ar/muniserv/Manuals/ccmanual07.pdf>.

[Back to top](#)

## **ARTICLE 2: THE CASH BASIS LAW**

### **10.2.1 Cash Basis Law**

The Kansas Cash Basis Law prohibits counties from creating any financial obligation—indebtedness—unless there is money on hand in the proper fund with which to pay for it. The cash-basis rule says that if there is no cash there can be no financial obligation.

[Back to top](#)

### **10.2.2 Cash Basis Exceptions**

The primary exceptions to the cash basis requirement are:

- When there is a favorable vote of the electors.
- Matters for which bonds will be issued.
- Where no-fund warrants are duly authorized.
- Airport revolving funds and enterprise utility funds that may accrue revenue.
- For extraordinary emergencies of a utility (and then only in the manner prescribed by K.S.A § 10-1116a).
- Lease-purchase agreements.

[Back to top](#)

### **10.2.3 Information for the Board and Public**

K.S.A. § 10-1117 requires the county clerk to “keep a record of the amount of money in the treasury and each particular fund and...a record of all indebtedness and contracts creating a liability against the municipality,” along with “a record of each order, warrant check or check, drawn on the treasury and paid, giving the date of payment.” County treasurers are likewise required to “keep a record of the amount of money on hand in the treasury, which record shall show at all times the amount of money in each particular fund.” Any person may request cash-basis records, and the clerk and treasurer must make them available. Parties that contract with the county are “chargeable with knowledge” of what the records kept by the county clerk contain.

[Back to top](#)

### **10.2.4 Void Contracts and Orders**

If a contract, order, warrant, or warrant check violates the cash basis law the instrument is void.

[Back to top](#)

### **10.2.5 Penalty**

The penalty for violation of the cash basis law may include removal from office.

[Back to top](#)

### **10.2.6 Conclusion**

The Kansas Cash Basis Law prohibits counties from creating indebtedness in excess of the amount of available cash—on a fund-by-fund basis. Kansas applies the law strictly. If the county does not have the revenue available at the time the Board creates the financial obligation, then the Board violates the cash-basis law. The repercussions range from voiding the transaction to removing the violator from office.

[Back to top](#)

## **ARTICLE 3: CLAIMS AND THEIR PAYMENT**

### **10.3.1 Claims Procedures**

A claim is a demand for payment. The general statutes on claims require that before authorization of any warrant or warrant check, claimants must present the governing body with a full written account of the items or services furnished to the county. A vendor’s usual statement of account is sufficient to constitute a proper claim for payment if it is itemized. It need not be sworn to, certified, or even signed.

Vendors’ bills come in different styles, shapes, and sizes. Internal financial controls require duplicates of the information on a standard document (commonly called a voucher) to facilitate an audit and show approval of payment. This voucher may be considered the legal claim to be presented on behalf of the vendor. There is no reason for the vendor to sign or even see the voucher if it is based upon a sufficient vendor’s statement detailing a full account of the charges. The vendor need not certify that a claim is due and unpaid.

The county clerk must audit and approve all claims in whole or in part as correct, due, and unpaid by the county before presenting the claim for payment to the governing body. The only exception to this pertains to notice of impending suit pursuant to K.S.A. § 12-105b(d). A claim may be payable out of more than one fund.

Usually, the county clerk creates the warrant listing before the Board meeting and lists the various claims under the proper fund so that—when the claims have been audited and approved—the listing can be presented and passed. If a certain item is not approved, the county clerk can strike it out before presenting the listing. The resolution, when passed, takes effect without publication. After the Board passes the warrant listing, the clerk writes the warrants and presents them to the chairperson for signature. In practice, the county clerk usually prepares the warrants before passage. If a claim is not allowed by the appropriation resolution, the county clerk voids the warrant.

[Back to top](#)

### **10.3.2 Illegal Transfers**

Paying a claim out of the wrong fund is the same as making an illegal transfer of money from one fund to another. If there is not enough money in a fund to pay a claim properly chargeable against it, it is an unlawful misappropriation of money to pay the claim out of another fund.

[Back to top](#)

### **10.3.3 Law of Triviality – Claims**

It is not necessary for the governing body (individually, collectively, or by committee) to separately evaluate and discuss each voucher or claim in an open meeting. Members of the Board may examine claims and their payments anytime (a privilege that private citizens also have). In the interests of time, many boards will place the approval of claims on a unified consent agenda to consider the items in a single motion near the beginning of every meeting. As mentioned in Chapter 7, a board member may move to remove an item from the consent agenda for individual discussion. It is the governing body's responsibility to set sound procedures to process claims. Developing a good, workable purchasing system, for example, may be a better use of time than reviewing vouchers at every meeting. Governing bodies should concentrate on preventing problems instead of finding and correcting mistakes.

Commissioners who feel obligated to review claims and vouchers should seek to avoid falling under the influence of the "Law of Triviality." This rule holds that the time spent on any item on the agenda will be in inverse proportion to the sum involved. For example, a governing body could spend hours questioning the appropriateness of a \$20 expenditure for a shovel, and then purchase a new information technology system costing thousands of dollars without reviewing its appropriateness because they might be embarrassed by their lack of knowledge about information technology. It is important to regularly check that the Board is making good use of its time by focusing on the most important issues.

[Back to top](#)

#### **10.3.4 Demand for Settlements and Damages: Notice Required Prior to Initiation of Suit**

Some demands for payments are different from ordinary claims. They do not arise from a purchase order or performance of a service and are not supported by an agreement or contract. This kind of demand arises primarily under K.S.A. § 75-6101 *et seq.*, the Kansas Tort Claims Act.

This law provides, in part, as follows:

Any person having a claim against a municipality that could give rise to an action brought under the Kansas Tort Claims Act shall file a written notice as provided in this subsection before commencing such action. The notice shall be filed with the clerk or governing body of the municipality and shall contain the following:

- The name and address of the claimant and the name and address of the claimant's attorney, if any;
- A concise statement of the factual basis of the claim, including the date, time, place and circumstances of the act, omission or event of the complaint;
- The name and address of any public officer or employee involved, if known;
- A concise statement of the "nature and extent of the injury claims to have been suffered"; and
- A statement of the amount of monetary damages that is being requested.

The claimant may not take legal action within 120 days after filing the notice of claim, unless the municipality denies the claim and provides notice before the 120 days expire. Any county official who receives a claim for damages or other settlements with the county should immediately refer the claim to the county attorney or county counselor. If such a claim involves potential liability under the Kansas Tort Claims Act or the Federal Civil Rights Act, officials should immediately notify the county's liability insurance carrier.

[Back to top](#)

#### **10.3.5 Payroll Claims**

In small counties with few employees, each employee may file a claim for salary or wages before each payday. In counties with a number of employees, each department often keeps records as to the time worked and amounts due. Instead of each employee filing a claim for the amount due, department heads should prepare and certify a payroll claim voucher for all of the employees. County clerks audit, approve, and pay employee payroll claims in the same manner as other claims.

[Back to top](#)



### **10.3.6 Warrants, Warrant-Checks, Checks**

A warrant is a written order drawn on the county treasurer for a definite money payment. A warrant is drawn to the order of the party entitled to payment, and it orders or “warrants” the county treasurer to pay the sum stated from the proper account to the named party. A warrant is not a check, and a depository bank cannot charge the county’s account with it. A check is then drawn by the county treasurer in favor of the holder of the warrant.

The warrant-check is a combination warrant and check included in the same instrument. It is both an order on the county treasurer and an order on the depository bank to pay the holder thereof.

The Board may authorize the use of the combined warrant check by passage of a resolution. In nearly all counties, the warrant-check has replaced the older warrant procedure because of the ease of handling payment of claims. Facsimile signatures may be used on warrant, warrant-checks, or checks.

[Back to top](#)

## CHAPTER 11: LOCALLY GENERATED COUNTY REVENUES

### ARTICLE 1: THE PROPERTY TAX

#### 11.1.1 Introduction

Any discussion of municipal finances requires an understanding of the property tax. The property tax has long been the principal revenue source used to finance local public services in Kansas. For most Kansans, it is the second largest tax paid, exceeded only by the federal income tax. In 2020, Kansans levied nearly \$5 billion in property taxes to partially finance programs and services in 2021.<sup>1</sup> Below is a table describing the distribution of the 2020 ad valorem taxes levied statewide among all taxing districts:

#### DISTRIBUTION OF PROPERTY TAXES LEVIED IN 2020 FOR BUDGET YEAR 2021

*(Expressed in dollars by taxing district, excluding penalties)*

<u>Taxing District</u>	<u>Amount</u>	<u>Percent Total</u>
<u>State</u>	<u>\$59,041,740</u>	1.12%
<u>Counties</u>	<u>\$1,515,993,106</u>	28.82%
<u>Cities</u>	<u>\$868,053,876</u>	16.50%
<u>Townships</u>	<u>\$89,160,272</u>	1.69%
<u>Community College</u>	<u>\$269,027,378</u>	5.11%
<u>USD General</u>	<u>\$732,787,344</u>	13.93%
<u>USD – All Other Funds</u>	<u>\$1,330,003,854</u>	25.28%
<u>All Other Districts</u>	<u>\$396,253,380</u>	7.53%
<u>Total Property Tax Dollars</u>	<u>\$5,259,690,980</u>	<u>100%</u>

[Back to top](#)

#### 11.1.2 The Ad Valorem Property Tax in Kansas

The ad valorem tax is a tax on all real and tangible personal property, authorized by Article 79 of the Kansas Statutes. The property tax is called an “ad valorem” tax because it is based on value. Real and personal property are taxed unless specifically exempted—either in the Kansas Constitution or by statute. Exempt property not subject to taxation consists principally of property owned and used by governmental, educational, religious, charitable, and non-profit organizations. Other kinds of property, such as business inventories, certain machinery and equipment, and personal household furnishings, are also exempt.

Assessment of a property tax involves a two-step process: appraisal and assessment. The counties appraise property, and the appraised value is multiplied by a specific number to determine the property’s assessed value (see § 11.1.3).

Property taxes are subject to the Kansas Constitutional mandate in Article 1, Section 1 that taxes be uniform and equal. This Constitutional requirement generally means that tax rates

within a taxing district must be uniform and equal. Equality is accomplished when the property tax is an *ad valorem* tax because the tax is uniform and equal, based on value.<sup>2</sup>

### **Property Subject to Taxation**

The property subject to the general property tax is divided into two categories:

- (1) **Real Property**
  - (a) Includes land, buildings, and improvements.
- (2) **Tangible Personal Property**
  - (a) Includes all property subject to ownership that is not real property. This includes capital assets such as stocks and profits of a corporation.

[Back to top](#)

#### **11.1.3 Property Exempt from Taxation**

Different types of property and uses for property are exempt from property taxes by either the Kansas Constitution or Kansas statutes. The list of property that is exempt from property taxes includes properties that are actually and regularly used for the following purposes:<sup>3</sup>

- (1) Religious.
- (2) Educational.
- (3) Literary.
- (4) Scientific.
- (5) Benevolent.
- (6) Alumni Associations.
- (7) Veterans Organizations.
- (8) Parsonages.
- (9) Community Service Organizations providing humanitarian services.

Property that is owned by the federal government and property that is used exclusively by the state, municipality, or political subdivision of the state is also exempt. The Kansas Legislature has provided for a wide range of property and ad valorem tax exemptions. For a complete listing of these various exemptions see K.S.A. § 79-201 *et seq.*

[Back to top](#)

#### **11.1.4 Determination of the Property Tax Bill**

A tax bill is determined by appraising the property and determining its value; multiplying the appraised value by a class factor to determine an assessed value; and then multiplying the assessed value by a composite rate. This composite rate is generally called a “mill”—one mill equals a \$1 tax per \$1,000 of assessed value.

*Example:*

A residential home appraised at \$43,000 is multiplied by the residential home class factor of 11.5% to obtain an assessed value of \$5,000. The assessed value is multiplied by the tax rate,

e.g. 35 mills (which is equal to \$35.00 per \$1,000.00 of assessed value), so the tax would be 35 times 5 or \$175.00.

[Back to top](#)

#### **11.1.5 Date for Property Valuation for Tax Purposes**

With the primary exception of motor vehicles, all taxable property is valued as of January 1 of each year.<sup>4</sup> County appraisers must notify taxpayers on or before March 1 of each year for real property or by May 1 of each year for personal property of the property's classification of a property and appraised value.<sup>5</sup> The notice must contain a statement of a taxpayer's right to appeal the classification or the valuation and the procedure to be followed in making an appeal.

Motor vehicles are not subject to *ad valorem* property taxes; rather, motor vehicle taxes are collected at the time of registration.<sup>6</sup>

[Back to top](#)

#### **11.1.6 Determination of the Assessed Valuation**

Each of the 105 counties in Kansas comprises a separate appraisal district, and each of the counties determines the appraised value of property located in their jurisdiction for ad valorem tax purposes. The appraisal system must conform to generally accepted appraisal procedures, adaptable to mass appraisal, as specified by law.<sup>7</sup> The Kansas Constitution fixes the assessment rate. The basic requirement is to base valuation on fair market value except for land devoted to agricultural use, which has its own formula based on eight-year land value averages. Kansas defines fair-market value as the amount of "money that a well-informed buyer is justified in paying and a well-informed seller is justified in accepting for property in an open and competitive market."<sup>8</sup>

The sale price is not, in and of itself, the sole criteria of fair market value for a piece of property, but is used in connection with cost, income and other factors according to K.S.A. § 79-503a as follows:

- (1) The proper classification of lands and improvements;
- (2) The size of the piece of property;
- (3) The effect the location has on the value of the piece of property;
- (4) Depreciation, (which includes functional, physical deterioration, economic depreciation, or social obsolescence);
- (5) Cost of reproduction of improvements;
- (6) The productivity of the piece of property, taking into account costs associated with federal and state restrictions applicable to low income housing;
- (7) The earning capacity of the property (which can be determined by lease price or capitalization of net income, or by absorption or sell-out period);
- (8) The rental or reasonable rental values, taking into account costs associated with federal and state restrictions applicable to low income housing;

- (9) Sale value on an open market with allowance to abnormal inflationary factors influencing values;
- (10) Restrictions placed on the use of real estate by the federal or state government, or local governing bodies, including zoning and planning boards or commissions; and
- (11) Comparisons with values of other property of known or recognized value. The assessment-sales ratio study shall not be used as an appraisal for appraisal purposes.

Property is classified in certain classes, and each class is assessed at a certain value. Classifications and their assessments—according to their percentage of value—are as follows:<sup>9</sup>

<u>Type of Property</u>	<u>% of Value Assessed</u>
-------------------------	----------------------------

**Real Property:**

- |  |      |
|--|------|
| • Real Property used for residential purposes  | 11.5 |
| • Real Property used for commercial purposes   | 25.0 |
| • Land devoted to agricultural use valued on the basis of its agricultural income or productivity pursuant to Article 11, Section 12 of the Constitution | 30.0 |
| • Vacant lots  | 12.0 |
| • All other urban or rural property  | 30.0 |

**Personal Property:**

- |   |      |
|---|------|
| • Mobile homes used for residential purposes              | 11.5 |
| • Mineral leasehold interests if less than 5 barrels/day  | 25.0 |
| • Mineral leasehold interests if more than 5 barrels/day  | 30.0 |
| • Public utility tangible personal property               | 33.0 |
| • Commercial and industrial machinery or equipment        | 25.0 |
| • All other personal property not specifically classified | 30.0 |

In the case of *Tax Appeal of Wichita Building Material*, 14 Kan. App. 2d. 39, 784 P.2d 378 (1989), the Kansas Court of Appeals heard the appeal of a taxpayer who valued his inventory at the same value stated on his federal income tax returns. The Appeals Court ruled that the county appraiser had the right to re-evaluate the property for property tax purposes. Therefore, the amount reported on the Federal Income Tax Return may not be the proper amount to determine the fair market value of the property.

[Back to top](#)

### **11.1.7 Appealing Property Valuations**

Any taxpayer can appeal the county appraiser's classification or assessed valuation by giving notice to the county appraiser within thirty (30) days of the mailing of the valuation notice required by K.S.A. § 79-1460.<sup>10</sup> The first step of the appeals process is an informal meeting involving the aggrieved taxpayer and the county appraiser or a staff member. A taxpayer who is aggrieved by the final determination of the county appraiser can appeal to the Small Claims Division of the Kansas Board of Tax Appeals. The statute references an appeal to a local hearing officer/panel (HOP), but the Division of Property Valuation has phased out this route as of 2016.<sup>11</sup> Any taxpayer may further appeal a decision of the Small Claims Division to the Kansas Board of Tax Appeals.<sup>12</sup> Filings with the Small Claims Division must be heard within 60 days of filing although the deadline may be extended if the property owner requests an extension.<sup>13</sup> Once an appeal of the property taxes has been filed, with regard to any matter properly submitted, an officer of the county may not raise the valuation of the property for taxation purposes.<sup>14</sup>

Taxpayers can also appeal the valuation by filing a fee appraisal with the Board of Tax Appeals, which the county must follow unless the county procures its own fee appraisal to rebut the taxpayer's or by filing a subsequent appeal to the Board of Tax Appeals.<sup>15</sup>

After the hearing process is complete, the county appraiser certifies the property appraisal rolls to the county clerk.<sup>16</sup> The county clerk forwards the assessment rolls to the Director of Property Valuation, whose staff reviews the assessment rolls. The Director of Property Valuation has oversight of all valuation assessments.

[Back to top](#)

### **11.1.8 Computation of the Tax Rate**

A county's property tax rate is determined by dividing the total amount of dollars necessary to fund the annual budget by the total assessed valuation of all the property in the taxing district. The total tax rate is based on the rates of each unit (county, city, school district, or state and special districts) levying a tax.

Note that because property tax exemptions take properties out of the above formula, exemptions increase the property tax rate for those properties that remain in the pool. Tax analysts refer to this as a "tax shift" because it moves the evenly distributed tax rate from excluded properties to those still eligible for taxation.

[Back to top](#)

### **11.1.9 Determination of the Property Tax Rate**

The amount of taxes each unit of government receives is based on its budget as determined by the governing body. The tax rate is determined by the amount of money that must be raised by a tax on property within the taxing district. While each taxing district publishes a proposed levy rate in its budget, the county clerk calculates the final actual rate. The county clerk and county treasurer prepare the tax bills and collect the taxes.

[Back to top](#)

#### **11.1.10 Property Tax Levies**

Tax levies must be authorized by law. Tax levies are fixed according to the needs of the adopted budget. The county Board cannot fix tax levies that will produce an amount greater than the amount budgeted for ad valorem taxes. Kansas law limits property tax rates for a variety of authorized funds. In 1999—after enactment of the Tax Reform and Relief Act—the Legislature suspended all statutory fund mill-levy-rate and aggregate-levy-rate limitations on taxing subdivisions (including counties).<sup>17</sup> Each taxing unit, including the county, must certify the taxes for levy to the county clerk by August 25.<sup>18</sup>

[Back to top](#)

#### **11.1.11 Due Date for Property Taxes**

Property taxes are due November 1.<sup>19</sup> If at least one-half of the taxes due are not paid by December 20, the taxpayer is delinquent, and taxes become subject to an interest charge.<sup>20</sup> The interest rate varies depending upon the delinquency period. If the amount of tax due is less than \$10.00, the full amount becomes due and payable by December 20. Taxing units may not use late tax payments (even though it may be received by the county treasurer between November 1 and December 31) until the beginning of the new budget year. Thus, assessment of property taxes produces revenues for the following county budget year.

Taxes are paid to the county treasurer. K.S.A. § 79-2024 allows a county treasurer to accept partial payment of taxes, but the treasurer cannot forgive or reduce delinquent taxes or interest.

[Back to top](#)

#### **11.1.12 Distribution of Taxes**

K.S.A. § 12-1678a establishes distribution dates for property taxes and other taxes collected by the county treasurer with payments starting in January. The Board can make agreements with other taxing units for alternative distribution programs and for sharing the interest earned by the county treasurer on the taxes belonging to other units.<sup>21</sup> In the absence of an agreement, the interest is paid to the county general fund.

[Back to top](#)

#### **11.1.13 Conclusion**

The previous section serves as a general overview of the Kansas property tax system as it concerns Kansas's counties. KAC offers additional resources to help commissioners fully understand the tax system. County officials should concertedly study the resources and statutes to prepare for county service.

[Back to top](#)

## ARTICLE 2: AD VALOREM PROPERTY TAX FORECLOSURE

### 11.2.1 Levy Becomes a Lien on the Property

Once the county treasurer receives the tax rolls, the levy becomes a lien against the real property.<sup>22</sup>The county treasurer must mail tax statements to the last known address of the owner of the property before December 15.<sup>23</sup> If the statement is returned, the county treasurer must make a diligent effort to find a forwarding address.<sup>24</sup>The taxpayer may pay in a single or one-half installment on December 20 or two installments with the second due on May 10.<sup>25</sup>

[Back to top](#)

### 11.2.2 Initial Delinquent Tax Sale or the County “Bid in” Procedure

If the taxpayer does not pay by the following May 10, the real estate is subject to a “delinquent tax sale.”<sup>26</sup>Between July 1 and July 10, the county treasurer must create a list of all of delinquent properties, and publish the list along with the owner’s name for three weeks.<sup>27</sup>The notice provides that the property will transfer to the county to cover the delinquent taxes; this process does not involve an actual sale or solicitation of bids; this is simply a procedural method to secure the county lien on the property.<sup>28</sup>

After the first Tuesday in September, the county treasurer—for lack of a better word— “sells” the property for the amount of unpaid taxes, charges, and interest due. This procedure is called the “bid in” and no other bid is entertained—thus the county claims the property.<sup>29</sup>The real estate continues to be liable to be taxed in the same manner as before and the “bid in” does not affect the title.<sup>30</sup>

[Back to top](#)

### 11.2.3 Redemption by the Property Owner

The owner or holder of record title may redeem the property at any time up to the time of sale by paying the taxes due, accrued interest, and any other costs borne by the county in anticipation of a tax sale.<sup>31</sup> If the property is not a homestead, the taxpayer must pay all of the delinquent taxes in full in order to redeem.<sup>32</sup>If the property is a homestead the owner must only pay one year’s delinquent taxes.<sup>33</sup>

[Back to top](#)

### 11.2.4 Foreclosure

Properties are eligible for sale and foreclosure based upon the following schedule.

Type of Property	When Eligible for Sale	Statutory Reference
Abandoned buildings unoccupied for one year.	One year after ‘bid in’ procedure	K.S.A. § 79-2401a(a)(2)
Other real property	Two years after ‘bid in’ procedure	K.S.A. § 79-2401a(a)(1)



Homestead property	Three years after 'bid in' procedure	K.S.A. § 79-2401a(b)(1)
--------------------	--------------------------------------	-------------------------

The procedure for foreclosing and selling property requires several steps.<sup>34</sup> Although the action is brought in the name of the Board, it is up to the county attorney or county counselor to initiate the proceedings.<sup>35</sup> Failure to perform these duties, either by the commissioners or attorney, could be grounds for forfeiture of office or a court order to initiate them.<sup>36</sup> The Board may exercise its discretion in initiating a foreclosure action when the aggregate value of the properties is less than \$300,000 or the amount of delinquent taxes is less than \$10,000.<sup>37</sup> If a delinquent property is within a city and has been delinquent for three years, the city may initiate the foreclosure proceedings.<sup>38</sup>

The county attorney or counselor prepares a petition to the court that lists the parcel, owners, and amount of taxes due. The attorney asks the court to approve the sale—the only action the court may take.<sup>39</sup> After filing the petition, it is binding upon both the property owner and the county—no settlements are allowed, and taxpayers may only redeem property by paying all taxes due.<sup>40</sup>

Property owners may be notified of the court hearing by personal service or weekly publication in the official county newspaper three times on consecutive weeks.<sup>41</sup> The court will order the sale, approve the lien amount, and direct the sheriff to conduct the sale. [Back to top](#)

#### **11.2.5 Foreclosure Sale by Public Auction**

The sheriff must publish a notice of sale three times in consecutive weeks in the official county newspaper before the sale. The notice must describe each parcel of property for sale and the amount of the lien.<sup>42</sup> The county must sell the property by public auction, and it may retain a professional auctioneer for the sale.<sup>43</sup>

Each parcel must be sold to the highest and best bidder. With the approval of the court, some parcels may be grouped together for sale.<sup>44</sup> The county may bid on a parcel, but only up to the amount of the lien.<sup>45</sup> Once the parcel has been sold, two actions are required. First, the successful bidder must be given a deed by the sheriff once the court has confirmed the sale. The purchaser obtains title to the parcel free from any obligations except for valid easements. Secondly, any funds in excess of the lien must be returned to the owner.<sup>46</sup>

[Back to top](#)

#### **11.2.6 Prohibited Bidders and Sales**

There are certain individuals who may not bid or purchase property at a sale. The following individuals cannot bid: the owner of the property, members of the owner's family, or anyone who might have an ownership interest in the parcel. Anyone who is currently delinquent on any property in that county is also prohibited from bidding.<sup>47</sup>

[Back to top](#)

### **11.2.7 Challenges After the Sale**

There may be challenges from the prior owner of the property based upon lack of notice or awareness. These claims are unlikely to be successful, assuming the county has followed the publication process outlined in law.<sup>48</sup>

Some purchasers may challenge the sale because of their inability to pay or misunderstanding about the location or some other feature of the land.<sup>49</sup> Those challenges will also be unsuccessful, and the county may seek to enforce the contract.<sup>50</sup> As a practical matter, it may be more efficient to resell the property.

[Back to top](#)

### **11.2.8 Lack of Interest in a Parcel**

Occasionally, one or more parcels may fail to sell at auction. When this happens, the county commissioners may enter into a negotiated sale.<sup>51</sup> The court must approve the sale, and the county must publish the amount, buyer's name, the description of the property, and notice of a public hearing on the matter.<sup>52</sup> The same prohibitions apply to those who are not allowed to bid at auction.

[Back to top](#)

## **ARTICLE 3: NON-PROPERTY TAX REVENUE**

### **11.3.1 Motor Vehicle and Recreational Vehicle Taxes**

Local units of government receive significant revenue in lieu of the general property tax from a tax on motor vehicles pursuant to K.S.A. § 79-5101 *et seq.*, and from a tax on recreational vehicles pursuant to K.S.A. § 79-5118 *et seq.* These vehicles are excluded from the general property tax assessment roll, and the owner of the vehicles (with some exceptions) pay special taxes when registering the vehicle. The amount of the tax is based on a statutory formula for various classes of vehicles. It sets taxes according to original value, age, and the county-wide average tax rate for the previous year.

The amount estimated to be received by the county in the following year is certified by the county treasurer prior to budget-making time.<sup>53</sup> The county treasurer distributes the revenue to the county and other units of government at the same time general property taxes are distributed and a distribution is also made in December.

[Back to top](#)

### **11.3.2 Local Option Gross Earnings (Intangibles) Tax**

Intangible property, such as certificates of deposit, savings and loan shares, mutual funds, and bonds are not subject to the general *ad valorem* property tax.<sup>54</sup> But the Kansas Constitution allows for a separate tax on this intangible property.<sup>55</sup> In 1982, the legislature abolished the statute on intangibles tax, but gave counties, townships, and cities the option to re-impose a local intangible tax—called the gross earnings tax—by resolution or ordinance. The maximum

that counties can impose is three quarters of 1 percent (0.75%). The maximum for townships and cities is 2.25%.<sup>56</sup> In 2015, 49 counties levied from .125% to .75% using intangible taxes. The total intangible taxes for 2015 statewide was \$1,676,063. Substantial exemptions to the tax are granted to persons aged 60 or over or who are disabled. The gross earnings tax does not apply to oil and gas leases or royalty interest because these interests are subject to *ad valorem* property taxes.<sup>57</sup> Earnings on municipal bonds are also exempt.<sup>58</sup> The Kansas Department of Revenue until 2010 provided intangibles tax return forms that were filed with the state and sent to the county. KDOR continues to produce the form but the county clerk and treasurer now collect and distribute the tax.

The gross earnings tax is one of the oldest forms of intangibles tax in Kansas.<sup>59</sup> Many consider it one of the fairest revenue sources available to counties and cities, especially with the substantial exemptions provided by state law. In some cities, it produces substantial revenue—equivalent to several mills of general property taxes.

[Back to top](#)

### **11.3.3 Resolutions to Levy the Intangibles Tax**

State law does not generally require a separate resolution each year to levy the intangibles tax. Instead, the resolution may be made applicable for the indefinite future, such as “for the year 2013 and thereafter.” The county could—at a future date—use another resolution to repeal a permanently levied tax or revise the rate. As noted above, the public could also use a referendum vote to repeal the intangibles tax or to levy the tax.

Note that counties, cities, and townships that have repealed or chosen not to levy the tax are not prohibited from levying a new local gross earnings tax.<sup>60</sup> The 1993 amendments to this section specifically provided for the re-imposition of a tax. A sample resolution for counties to levy a county intangibles tax is available at the conclusion of this chapter.

Voters may initiate a gross earnings tax in their county, and they may also eliminate it by petition and election.<sup>61</sup>

[Back to top](#)

### **11.3.4 Authorization and Receipt of Intangibles Tax Revenues**

There is a significant time lag for the intangibles tax. As previously noted, the local resolution must be adopted by September 1 of the “year preceding the year in which the levy of such taxes will commence.”

K.S.A. § 12-1,104 requires each taxpayer who receives taxable earnings to file a return with the county clerk before April 15 following the taxable year. The Kansas Department of Revenue (KDOR) prescribes a form, but the county clerk provides it to the taxpayer. The county clerk computes the tax and certifies the amount to the county treasurer. Intangible taxes are due at the same time as personal property taxes—December 20 and May 10.<sup>62</sup>

[Back to top](#)

### **11.3.5 Transient Guest Tax**

Under K.S.A. § 12-1693 and K.S.A. § 12-1696 *et seq.*, cities and counties may levy a transient guest tax. While the authorizing statute provides that the tax cannot exceed 2% of the gross receipts from the rental of hotel and motel guest rooms, it is non-uniform and subject to a charter resolution by the county. As such, a county or city can exceed the 2% rate by adopting a charter resolution or ordinance, respectively. The Board must adopt a resolution for an election to pass the tax. If the city passed an ordinance, the county must notify all incorporated cities of the intent to call for an election. The county may also decline participation in the election. If the county does not participate, the cities can hold individual elections and the tax only applies to the cities that want the tax. If the county participates in the election, the county has to allow participation in the election by all unincorporated areas of the county, if the unincorporated areas want to participate in the election. The revenue from the tax, minus 2% for the KDOR administration costs, is returned quarterly to the governing body levying the tax.

[Back to top](#)

### **11.3.6 Emergency Telephone Tax**

Communication technology has changed dramatically in recent years. Public safety dispatch centers serve a vital role of identifying calls from landlines and wireless cell phones. Citizens look to counties to ensure public safety, and the Legislature provides funding mechanisms for necessary equipment in K.S.A. § 12-5327 *et seq.*

In 2011, Kansas passed the Kansas 911 Act. The Act created the 911 Coordinating Council, which “monitor[s] the delivery of 911 services, develop[s] strategies for future enhancements to the 911 system, and distribute[s] available grant funds to PSAPs” (Public Safety Answering Point).<sup>63</sup>The law also sets a monthly 911 fee of \$0.90 per subscriber account of any “exchange telecommunications service, wireless telecommunications service, VoIP service, or other service capable of contacting a PSAP.”<sup>64</sup>

Each exchange telecommunications service provider, wireless telecommunications service provider, VoIP service provider, or other service provider must remit the monthly fees to the Local Collection Point Administrator (“LCPA”). The LCPA collects and distributes the 911 fees and 911 state grant funds to the PSAPs. The 911 Coordinating Council appoints the LCPA.

[Back to top](#)

### **11.3.7 Mortgage Registration Fees**

The County Register of Deeds office is responsible for filing and maintaining many documents in each county, including mortgages. State statute provides that Registers of Deeds receive and file real-estate mortgages. Historically, Registers of Deeds also collected a registration fee of 0.26% of the principal debt or obligation being secured.<sup>65</sup>This also included 1/26<sup>th</sup> of the mortgage registration fee going to the Heritage Trust Fund for maintaining historic structures.

But in 2014, the Kansas Legislature overhauled this system by phasing out the fee. The law replaces the mortgage registration fee with an increased per-page fee for filings with the Registers of Deeds. A \$1 fee goes to the Heritage Trust Fund with a cap of \$30,000 for the fee from each county. A \$1 fee is also added and split into two separate \$0.50 credits for the County Clerk Technology Fund and the County Treasurer Technology Fund.<sup>66</sup>As of the 2019 publication, Kansas has phased out the mortgage registration fee in favor of the filing fee.

[Back to top](#)

### **11.3.8 Countywide Sales Taxes**

The principal non-property tax revenue source available to both counties and cities is the local sales tax. The Legislature authorized counties and cities to levy local sales taxes in 1970. The Legislature has also created a local use tax for motor vehicles and watercraft purchased out of state. The following discussion concerns countywide sales taxes imposed at the county level. While cities can impose citywide sales taxes, this document does not reflect city-imposed sales taxes. There are several reports available on the Department of Revenue website with comprehensive data.

When the Board contemplates imposing a countywide sales tax, many questions arise. The most common questions—and potential answers to those questions—are available below.

#### **1. How can a county levy a countywide sales tax?**

Only with the approval of the voters. Elections are required prior to the imposition of or increase in any local sales tax, and a statement describing the purposes for which the taxes will be used must be part of the ballot question. (A sample resolution for counties to levy a countywide sales tax is available at the conclusion of this chapter.)

#### **2. What is the maximum countywide rate a county may levy?**

Counties may levy a countywide sales tax in 0.25% increments up to a maximum of 1.0%, with certain exceptions. Sales taxes of up to 1.0% may be used for general purposes, though the Legislature may authorize an additional 1.0% for named counties to finance specific programs and services.<sup>67</sup>Thus, there is potential for a 2.0% local sales tax authority by combining local and legislatively authorized taxing authority.

#### **3. What items will be taxed?**

Except for residential utility services (subject to local sales taxes but exempt from the state sales taxes), countywide sales taxes are identical—in application and exemptions—to the state sales tax. With this limited exception, if an item or service is subject to the state retail sales tax, it is subject to the countywide sales tax; if exempt from the state tax, it is exempt from the countywide tax.

**4. Who must pay the tax?**

Every resident or nonresident who purchases taxable items or services within the county where the local sales tax exists. Except for utilities and cable television service, the tax is based on the location of the retail transaction, not on the residence of the purchaser. Additionally, motor vehicles and boats purchased out-of-state are subject to any local sales tax levied by the county and city in which the owner resides.

**5. Who collects the tax?**

The Kansas Department of Revenue collects the local tax from the retailer at the same time it collects the state tax.

**6. Who pays for the cost of collection?**

For the state of Kansas, no administrative fees are charged to the counties.

**7. How much will the tax yield?**

This varies from place to place, depending on the volume of retail transactions occurring within the taxing unit. On a per capita basis, the amount ranges considerably. Prior to asking voters to consider adopting a local sales tax, KAC recommends contacting the Policy Research Division of the Kansas Department of Revenue to seek assistance in calculating an estimated range of potential revenue from a countywide sales tax.

**8. How is the revenue distributed?**

The Department of Revenue distributes revenue from the countywide tax to the levying county and cities. Unless the revenue from a countywide sales tax is earmarked for a special, dedicated purpose (e.g., health care, detention facility construction), KDOR apportions the sales tax revenue to the county and cities within the county, with 50% in proportion to total, unit-wide property tax levies and 50% in proportion to urban and non-urban population. There are, however, several exceptions to the distribution formula provided in the statute.

**9. Who can call a countywide sales tax referendum?**

The Board can call a countywide sales tax referendum at its discretion or if mandated. The Board can be mandated to act in one of three ways: (1) on the petition of 10% of the number of electors who last voted for the office of the Secretary of State; (2) at the request of the governing bodies of one or more cities which contain at least 25% of the population of the county, by resolutions passed by a 2/3 vote; or (3) at the request of the governing bodies of one or more cities that levy at least 25% of the property taxes levied by all taxing subdivisions within the county.<sup>68</sup>

**10. Who determines the rate of a countywide sales tax?**

The tax rate, either half percent or one percent, is fixed by the Board and specified on the ballot. If citizens petition the referendum, the rate is specified in the petition. If the proposal is initiated by resolution of one or more cities, their resolutions indicate the requested rate.

**11. Can two or more counties hold a joint referendum?**

State statutes specify that two or more contiguous counties may jointly schedule a referendum. But the countywide sales tax only takes effect in those counties where the voters approve it.

**12. Who pays for the countywide referendum?**

The county.

**13. Who may vote on the question?**

Every qualified elector of the county.

**14. When can a sales tax referendum be held?**

At any time. A mail ballot may be used.

**15. What happens if the voters disapprove the sales tax measure?**

Nothing, another referendum could be held in the future.

**16. How successful have sales tax referenda been in the past?**

Votes to authorize or increase a local sales tax have been successful more often than not. Countywide sales taxes have generally appealed to voters as a way to reduce local ad valorem property taxes or off-load the cost of services to non-residents. Support for additional sales tax has diminished in recent years as the state's sales tax rate now stands at 6.3%—creating a steep aggregate (state and local) sales tax rate.

**17. Which counties currently levy a countywide sales tax?**

All but 14 counties levy a countywide sales taxes ranging from 0.25% to 2.25%.

**18. Can existing countywide sales taxes be increased?**

Yes, by the same procedures used to levy the initial sales tax, up to the maximum statutory rate.

**19. How often will the revenue be received?**

The Kansas Department of Revenue distributes the receipts monthly. There is about a two-month lag between the beginning of the tax and actual local receipts.

**20. Will the revenue increase in the future?**

It depends on future business conditions. Local revenue trends vary with the economy and inflation. Some counties have experienced a decline in revenues in recent years.

**21. How can counties use the money?**

State law provides that the money must go to the general fund. The county can use a portion for property tax reduction by reducing the tax levy otherwise required to support the general fund. State law permits the transfer of county sales tax money to the county road and bridge fund. Another law permits local units to pledge the purposes for which sales tax revenue will be used if the voters approve the tax. Both cities and counties are authorized to issue sales tax bonds for public improvements.

**22. When can the tax take effect?**

Collections cannot begin before the first day of a calendar quarter. For primary or general elections the tax may begin with the next quarter 30 days after the election. If the county holds a special election, the tax may take effect with the quarter beginning no sooner than 60 days after the referendum. The resolution calling the referendum and the ballot question should state the date the tax is to take effect.

**23. Must the revenue be budgeted?**

Yes, all public funds spent by local units, with few exceptions, are subject to budgeting pursuant to state statute.<sup>69</sup>

**24. Are there other tax alternatives besides the sales tax and property tax?**

Not many. State statutes prohibit county and city income taxes. The local gross earnings tax on intangibles is allowed and discussed in 11.3.2, 11.3.3, and 11.3.4.

**25. Are there any special local sales tax exemptions or applications?**

As noted in question 3—except for special provisions relating to utility services and certain residential fuel sources—the local retailers sales tax applies to every purchase in the same manner as the state retail sales tax. The state exempts the sale of natural gas, electricity, and heat and water delivered through lines or mains for agricultural uses or to residential premises for non-commercial purposes from state tax. But these items are not exempt from any local



sales tax. Sales of propane gas, LP-gas, coal, and other fuel sources for heat or lighting for residential purposes are exempt from the state sales tax but not the local sales tax. Residential water sales, however, are now exempt from local sales taxes under state law. A city or county may not grant a sales tax exemption.

**26. Is the sales tax regressive?**

Yes, in a relative sense when compared to other forms of taxation. Lower income families pay a larger share of their income for both sales taxes and property taxes than higher income families. It is a “proportional tax,” in the sense that everyone pays the same tax rate—the more you spend, the more you pay. It is not a “progressive tax,” since the tax rate does not increase according to income. Put another way, it is a relatively large percentage of a low-income family’s income that goes to necessities like food and fuel when compared to a high-income family.

**27. Is the sales tax better suited for larger units of local government?**

Since there is no local administrative cost, the population size of the taxing district is not as important as the potential revenue. Countywide sales taxes exist in large and small counties.

[Back to top](#)

**SAMPLE RESOLUTION FOR COUNTIES  
LEVYING GROSS EARNINGS ON INTANGIBLES**

**Resolution No. \_\_\_\_\_**

*A Resolution Levying a County Gross Earnings Tax on Intangibles for the Year \_\_\_\_\_  
and thereafter.*

**Be it resolved** by the Board of \_\_\_\_\_ County Commissioners of  
\_\_\_\_\_ County, Kansas:

**Section 1.** In accordance with the provisions of K.S.A. § 12-1,101, there is hereby levied in the County of \_\_\_\_\_ a tax of \_\_\_\_\_ percent (\_\_\_\_%) on the gross earnings from money, notes, and other evidence of debt, commonly known as intangibles, having a taxable situs in the County. Such tax is hereby levied for the year \_\_\_\_\_ and thereafter on gross earnings from such intangibles and shall be applicable to such earnings and subject to such exemptions as provided by law.

**Section 2.** This resolution shall be published once in the official county newspaper, and a copy duly certified shall be transmitted to the county clerk.

**Adopted** this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by the Board of County Commissioners.

THE BOARD OF COUNTY COMMISSIONERS  
\_\_\_\_\_ COUNTY, KANSAS

\_\_\_\_\_  
, Chair

\_\_\_\_\_  
, Member

\_\_\_\_\_  
, Member

ATTEST:

\_\_\_\_\_  
County Clerk

[Back to top](#)

**SAMPLE RESOLUTION FOR COUNTIES  
PROPOSING A COUNTYWIDE SALES TAX**

**Resolution No. \_\_\_\_\_**

*A Resolution Authorizing Submission of the Question of Imposing a \_\_\_\_ Percent (\_\_\_\_%)  
Countywide Retailers' Sales Tax to the Qualified Electors of \_\_\_\_\_ County, Kansas.*

**Be it resolved** by the Board of \_\_\_\_\_ County Commissioners of \_\_\_\_\_  
County, Kansas.

**Whereas**, the Board of \_\_\_\_\_ County Commissioners, by the powers vested in it  
by K.S.A. § 12-187(b)(1), may submit to the qualified electors of the County the question of  
levying a countywide retailers' sales tax, such tax to be administered and collected by the state  
department of revenue with the revenue derived therefrom to be returned and distributed as  
provided by law to \_\_\_\_\_ County, and the cities of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_,  
and \_\_\_\_\_; and

**Whereas**, the Board of \_\_\_\_\_ County Commissioners desire to control and, as  
possible, reduce property taxes while continuing to provide essential public services for the  
citizens of \_\_\_\_\_ County.

**Now, Therefore, Be it Resolved** by the Board of \_\_\_\_\_ County Commissioners  
that the question of imposing a \_\_\_\_ percent (\_\_\_\_%) countywide retailers' sales tax be submitted  
to the qualified electors of \_\_\_\_\_ County; and

**Be it Further Resolved** that the purposes for which the revenue derived from the county's  
portion of such retailers' sales tax would be used are to: (1) finance and maintain public services;  
and (2) provide property tax relief as determined by the Board \_\_\_\_\_ County  
Commissioners; and

----- *(Use one of the following two paragraphs)* -----

**Be it Further Resolved** that said election shall occur by mail ballot on \_\_\_\_\_(date),  
pursuant to K.S.A. 25-431 *et seq.*,

*(Or, alternatively)*

**Be it Further Resolved** that said question shall be included on the general election ballot  
of \_\_\_\_\_(date);

---

**Be it Further Resolved** that the question included on such ballot shall be in the form  
required by the laws of the State of Kansas in a form substantially similar to the following:

## OFFICIAL BALLOT

To vote in favor of the question submitted upon this ballot, make a cross or check mark in the square to the left of the word "Yes"; to vote against the question submitted, make a cross or check mark in the square to the left of the word "No."

*Shall the following be adopted:*

That \_\_\_\_\_ County, Kansas adopt a retailers' sales tax in the amount of \_\_\_\_\_ percent (\_\_\_\_%), to be imposed upon all retail sales within the County of \_\_\_\_\_ effective \_\_\_\_\_ (date), with the revenue derived from such tax to be pledged to: (1) finance and maintain public services; and (2) provide property tax relief as determined by the Board of \_\_\_\_\_ County Commissioners.

- (a) Yes
- (b) No

**Be it Further Resolved** that notice of said election shall be published pursuant to law and the county election officer is hereby authorized to publish said notice; and

**Be it Further Resolved** that this resolution shall be effective upon publication in the official county newspaper.

**Adopted** this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by the Board of \_\_\_\_\_ County Commissioners.

THE BOARD OF \_\_\_\_\_ COUNTY COMMISSIONERS

\_\_\_\_\_ COUNTY, KANSAS

\_\_\_\_\_, Chair

\_\_\_\_\_, Member

\_\_\_\_\_, Member

Attest: \_\_\_\_\_,  
County Clerk

[Back to top](#)

## CHAPTER 11 ENDNOTES

<sup>1</sup> The State of Kansas Division of Property Valuation, information, access <https://www.ksrevenue.org/PVDMAPS/Statewide.pdf> (last accessed April 7, 2023).

<sup>2</sup> *Hines v. City of Leavenworth*, 3 Kan. 186 (1865).

<sup>3</sup> K.S.A. § 79-201 *et seq.*

<sup>4</sup> K.S.A. §§ 79-1455, 79-503a.

<sup>5</sup> K.S.A. § 79-1460.

<sup>6</sup> K.S.A. §§ 79-306d, 79-5102.

<sup>7</sup> For more information on establishing an appraisal system, refer to A.G. 90-10, classification of property; and A.G. 91-134, authority and duties of the director of property valuation.

<sup>8</sup> K.S.A. § 79-503a.

<sup>9</sup> K.S.A. § 79-1439.

<sup>10</sup> K.S.A. § 79-1448.

<sup>11</sup> See K.S.A. § 79-1611 for the process to appoint a hearing officer.

<sup>12</sup> K.S.A. § 79-1609.

<sup>13</sup> K.S.A. § 74-2433f(g).

<sup>14</sup> K.S.A. § 79-1448.

<sup>15</sup> K.S.A. § 74-2433f(h).

<sup>16</sup> K.S.A. §§ 79-1466 (real property) and 79-1467 (personal property).

<sup>17</sup> K.S.A. § 79-5040.

<sup>18</sup> K.S.A. § 79-1801.

<sup>19</sup> K.S.A. § 79-1804.

<sup>20</sup> K.S.A. §§ 79-2004, 79-2004a.

<sup>21</sup> K.S.A. § 12-1678a.

<sup>22</sup> K.S.A. § 79-2001 *et seq.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*; see also *In re TV Realty, L.L.C.*, 27 Kan. App. 2d 28, 997 P.2d 742 (2000).

<sup>25</sup> K.S.A. § 79-2004.

<sup>26</sup> K.S.A. § 79-2301

<sup>27</sup> K.S.A. § 79-2303.

<sup>28</sup> *Id.*

<sup>29</sup> K.S.A. § 79-2306.

<sup>30</sup> K.S.A. § 79-2319.

<sup>31</sup> K.S.A. §§ 79-2401a, 79-2801.

<sup>32</sup> K.S.A. § 79-2401a(a)(1) and (2).

<sup>33</sup> K.S.A. § 79-2401a(b)(1).

<sup>34</sup> K.S.A. § 79-2801 *et seq.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> K.S.A. § 79-1703.

<sup>41</sup> K.S.A. § 60-307.

<sup>42</sup> K.S.A. § 79-2804.

<sup>43</sup> *Id.*

<sup>44</sup> K.S.A. § 79-2803a(a).

<sup>45</sup> K.S.A. § 79-2804.

<sup>46</sup> K.S.A. § 79-2803.

<sup>47</sup> K.S.A. § 79-2812.

<sup>48</sup> *Newman v. Bd. of Shawnee Cty. Comm'rs*, 14 Kan.App.2d 648, 804 P.2d 353 (1990).

- 
- <sup>49</sup> *Graham v. Lambreth*, 22 Kan.App.2d 805, 807, 921 P.2d 850 (1996).
- <sup>50</sup> *Feaster-Trucking Serv., Inc. v. Parks-Davis Auctioneers, Inc.*, 211 Kan. 78, 505 P.2d 612 (1973).
- <sup>51</sup> K.S.A. § 79-2803b.
- <sup>52</sup> *Id.*
- <sup>53</sup> K.S.A. § 79-5111.
- <sup>54</sup> K.S.A. § 79-3109c.
- <sup>55</sup> Kansas Constitution, Article 11, Section 1.
- <sup>56</sup> K.S.A. § 12-1,101; A.G. 90-74.
- <sup>57</sup> K.S.A. § 12-1,102(b), 79-3109d.
- <sup>58</sup> K.S.A. § 12-1,109(e).
- <sup>59</sup> K.S.A. § 12-1,101.
- <sup>60</sup> *See* K.S.A. § 12-1,101(e).
- <sup>61</sup> K.S.A. § 12-1,101.
- <sup>62</sup> K.S.A. §§ 12-1,106, 79-2004a.
- <sup>63</sup> K.S.A. § 12-5364; *see* 911 Coordinating Council at [www.kansas911.org](http://www.kansas911.org). (Last accessed April 7, 2023)
- <sup>64</sup> 2019 Kan. Laws Ch. 39 (H.B. 2084), §7, K.S.A. 2018 Supp. 12-5364(g).
- <sup>65</sup> §7. K.S.A. 2018 Supp. 12-5369.
- <sup>66</sup> K.S.A. §§ 79-3102, 28-115.
- <sup>67</sup> K.S.A. § 12-189.
- <sup>68</sup> K.S.A. § 12-187.
- <sup>69</sup> K.S.A. § 12-191; A.G. 93-22, 90-17.

## **CHAPTER 12: PROPERTY TAXATION**

### **12.1.1 Introduction**

Since 1999, Kansas has operated under K.S.A. § 79-2925b, a Truth in Taxation law. The law requires public disclosure when the governing body of any municipality approves any appropriation or annual budget that is funded by revenue produced from property taxes more than those raised in the preceding year. In 2016, the legislature passed the Senate Substitute for House Bill 2088, which is commonly known as the property tax lid. This law imposed new election requirements for cities and counties, which went into effect on January 1, 2017. As of 2021, Kansas adopted Senate Bill 13 which repeals the property tax lid and instead replaces it with a process in which the governing body must clearly notify the public of its intent to raise taxes and hold a public hearing on the said increase. These public hearings are meant to deter tax increases through public dissent while still allowing counties to increase taxes as needed.

[Back to top](#)

### **12.1.2 The Legal Requirements**

On or before June 15 of each year, the county clerk must calculate the revenue neutral rate for each taxing subdivision and then send an estimated revenue neutral rate to each taxing subdivision for budgeting purposes.<sup>1</sup> The revenue neutral rate (RNR) is the tax rate for the current tax year that would generate the same amount of property tax revenue as levied the previous tax year using the current year's valuation. The director of accounts and reports will review and modify the budget information and come up with a final revenue neutral rate.<sup>2</sup>

If the Board approves a budget or appropriation that does not exceed the revenue neutral rate, then no further steps by them are needed. If, however, the board plans to approve a budget that is more than the revenue neutral rate then the board must:

1. Schedule a date, time, and location in which to have a public hearing;
2. At least ten days before the public hearing, publish its proposed tax rate, its revenue neutral rate, and the date, time, and location of its public hearing both.
  1. Note: Notification must be posted on the county's website and in a county newspaper.
3. On or before July 20th, notify the County Clerk of its intention to exceed the revenue neutral rate with information of its proposed tax increase, along with the date, time, and location of the public hearing.<sup>3</sup>

After receiving notice, the County Clerk must, in turn, send each taxpayer with property in the taxing subdivision notice 10 days prior to the public hearing. This notice may be sent via mail, using the taxpayers last known address, or electronically IF the county clerk and taxpayer have consented in writing to notice being sent electronically. The notice must include, but not limited to:

1. The revenue neutral rate of each taxing subdivision relevant to the taxpayer's property;
2. the proposed property tax revenue needed to fund the proposed budget of the taxing subdivision, if the taxing subdivision notified the county clerk of its proposed intent to exceed its revenue neutral rate;
3. the proposed tax rate based upon the proposed budget and the current year's total assessed valuation of the taxing subdivision, if the taxing subdivision notified the county clerk of its proposed intent to exceed its revenue neutral rate;
4. the percentage by which the proposed tax rate exceeds the revenue neutral rate;
5. the tax rate and property tax of each taxing subdivision on the taxpayer's property from the previous year's tax statement;
6. the appraised value and assessed value of the taxpayer's property for the current year;
7. the estimates of the tax for the current tax year on the taxpayer's property based on the revenue neutral rate of each taxing subdivision and any proposed tax rates that exceed the revenue neutral rates;
8. the difference between the estimates of tax based on the proposed tax rate and the revenue neutral rate on the taxpayer's property described in subparagraph (F) for any taxing subdivision that has a proposed tax rate that exceeds its revenue neutral rate; and
9. the date, time and location of the public hearing of the taxing subdivision, if the taxing subdivision notified the county clerk of its proposed intent to exceed its revenue neutral rate.
10. a statement of the statutory mill levies imposed by the state and the estimate of the tax for the current year on the taxpayer's property based on such levies.<sup>4</sup>

At least ten days after the notice is sent, and between the dates of August 20th and September 20th, the board must hold a public hearing for interested taxpayers. In the hearing, the board must allow interested taxpayers a reasonable amount of time to make public comments. The board may place limitations on the number of interested taxpayers allowed to speak but the limitation must not be unreasonable.<sup>5</sup>

After public comment has concluded, the board may pass the proposed tax increase by majority vote but must take the vote while still in the public hearing.

[Back to top](#)

### **12.1.2 Failure to Meet Requirements**

Failure to meet any of the legal requirements set forth above will require the county to return any revenue collected more than the previous year's revenue neutral rate. Additionally, even though the revenue was returned, the county could still be potentially liable to any suits based on the failure to meet legal requirements.<sup>6</sup>

[Back to top](#)



## CHAPTER 12 ENDNOTES

---

<sup>1</sup> K.S.A. § 79-2988(a).

<sup>2</sup> *Id.*

<sup>3</sup> K.S.A. § 79-2988(b)(2).

<sup>4</sup> *Id.*

<sup>5</sup> K.S.A. § 79-2988(b)(3).

<sup>6</sup> K.S.A. § 79-2988(e)(1).

## **CHAPTER 13: OTHER REVENUE SOURCES**

### **ARTICLE 1: STATE AID AND SHARED TAXES**

#### **13.1.1 Local Ad Valorem Tax Reduction Fund (LAVTRF) (K.S.A. § 79-2959)**

Historically, all local taxing subdivisions (except unified school districts) have received payments from the Local Ad Valorem Tax Reduction Fund (LAVTRF).<sup>1</sup> The LAVTR fund is supposed to receive 3.63% of state sales and use tax receipts, and the State is to proportionately distribute the fund to all counties—65% on the basis of population and 35% on the basis of assessed tangible valuation. Then each county is to proportionately divide the fund between all taxing subdivisions—excluding unified school districts—based on the property tax relief. Despite the statutory requirement, the Legislature has not appropriated the fund for years.

[Back to top](#)

#### **13.1.2 County and City Revenue Sharing Fund (CCRSF) (K.S.A. § 79-2964)**

Historically, cities and counties have received state payments from the “County and City Revenue Sharing Fund.” The fund by statute is supposed to receive 2.8% of state sales and use tax receipts. The CCRSF is divided among all counties, 65% on the basis of population and 35% on the basis of assessed tangible valuation.<sup>2</sup> Within each county, the amount is further divided with the county receiving 50% of the money and cities within the county receiving the other 50% in proportion to their populations.<sup>3</sup> The CCRSF is distributed by the State to units of local government for property tax relief. This program has similarly gone unfunded for years.

[Back to top](#)

#### **13.1.3 Special City and County Highway Fund (SCCHF) (K.S.A. § 79-3425)**

The primary state revenue sharing program for the maintenance and repair of local county roads and city streets is the Special City and County Highway Fund (SCCHF). The two major sources of revenue for the SCCHF are a percentage of the state’s Motor Fuels Tax (primary source, approximately 90%) and the State’s motor carrier property tax (secondary source, approximately 10%). In recent years, the State has not distributed the motor carrier property tax revenue to the cities and counties.

[Back to top](#)

#### **13.1.4 Alcoholic Liquor Tax (K.S.A § 79-41a01 *et. seq.*)**

The state has a 10% tax on the gross receipts from the sale of liquor and cereal malt beverage by the drink.<sup>4</sup> The drink tax applies to the gross receipts from the sale of drinks containing alcoholic liquor and cereal malt beverages sold by private clubs, private caterers, and drinking establishments.<sup>5</sup> The local share of the drink tax depends on amount of tax collected by the city or county. The counties receive 70% of this tax if the establishment is located inside the county

and outside of a city corporate limit.<sup>6</sup> The revenue from the tax is distributed on March 15, June 15, September 15, and December 15.<sup>7</sup>

K.S.A. § 79-41a04 states that counties and cities with a population over 6,000 must allocate the revenue as follows:

- (1) One-third to the general fund;
- (2) One-third to a special alcohol and drug program fund; and
- (3) One-third to a special parks and recreation fund.

Cities that have a population of less than 6,000 give the one-third share for the alcohol and drug treatment fund to the county, to be used for the county's own drug and alcohol treatment fund.

[Back to top](#)

### **13.1.5 Severance Tax Payments (K.S.A. § 79-4216 *et seq.*)**

K.S.A. § 79-4216 *et seq.* levies a tax on the severance and production of certain minerals. The tax is levied at a gross rate of 8% on the gross value of severed oil and gas, and one dollar per ton of coal.<sup>8</sup> The net effective rate, after credits for property rates, is 4.33% for both oil and gas. Substantial exemptions are granted for such purposes as low production, new production, and enhanced recovery.<sup>9</sup> The 2012 Legislature added additional exemptions by exempting any production for pools that produce less than 50 barrels per day.<sup>10</sup> If the well has not been producing for three years prior to July 1, 1996, the severance tax can be exempt for 10 years. The revenue from the severance tax, after refunds, is distributed as follows: 93% to the state general fund and 7% to a "special county mineral production tax fund," which is shared equally by counties and school districts.<sup>11</sup>

Distribution Formula. KDOR distributes the special county mineral production tax (rebate) fund<sup>12</sup> to county treasurers quarterly on March 1, June 1, September 1, and December 1. The money in the fund is distributed to the county treasurer proportionally, to the extent that severance taxes are levied on the production of minerals in each county bears to the total of all such taxes levied. An example of this would be that if 50% of the total severance tax comes from a particular county, the county is authorized to credit half to the county general fund and the remaining half is split between each school district in the county. The school districts' share is based on the proportion that the assessed valuation of coal (the first 350,000 tons of coal is exempt from the severance tax<sup>13</sup>), oil and gas property within the district bears to the total of all such valuation in the county, based on the valuations for the most recent November 1 tax roll.<sup>14</sup>

[Back to top](#)

### **13.1.6 Conclusion**

The State of Kansas and local governments share revenues and service responsibilities. Typically, the funds come into the state general fund, and the state distributes the revenue to

the respective counties. If there is another governmental entity that is to receive funds, such as a unified school district, the county treasurer will distribute funds to this entity. Counties need to carefully make their budget projections since the amount of revenue from these sources can vary from year-to-year, due to changes in the law.

[Back to top](#)

## ARTICLE 2: FEDERAL AND STATE GRANTS

### 13.2.1 Federal and State Grants

Counties and cities may benefit from federal and state grants available to assist in financing capital improvements and other public needs. Grant programs change from year-to-year due to legislation and funding limitations. The following section covers some of the grants used by Kansas counties.

[Back to top](#)

### 13.2.2 Kansas Department of Transportation (KDOT) Programs for Counties

KDOT administers the following programs through funding provided by the State Highway Improvement Program. Counties and other units of local government apply to KDOT for funding based on a priority-driven process. KDOT sets projects for programming in advance and generally in accordance with the schedules discussed below:

1. **Substantial Maintenance Program.** Substantial maintenance projects intended to protect the traveling public and the public's investment in its highway system by preserving the as-built condition as long as possible. (State highways within city boundaries.)
2. **Major Modification Program.** The Major Modification Program is designed to improve the service, comfort, capacity, condition, economy, or safety of the existing highway system. This program includes two set-asides applicable to local transportation authorities. They are: Geometric Improvement and Economic Development.
  - a. **Geometric Improvement** projects are designed to help cities with pavements, adding or widening shoulders, and adding needed turning, acceleration, and deceleration lanes on City Connecting Links (i.e., state highways within cities).
  - b. **Economic Development** projects are road and bridge construction projects intended to enhance the economic development of the state of Kansas. KDOT funds these projects on a maximum 75% state/25% local match basis.

The Bureau of Program Management annually solicits applications from cities, counties, and Metropolitan Planning Organizations (MPOs) for projects under these programs in June.

Applications are due in September with project selection taking place the following spring. KDOT programs these projects three years in advance of construction.

[Back to top](#)

### **13.2.3 Federal Road Programs for Local Jurisdictions**

The two most prominent grant programs for Kansas counties are the Highway Planning and Construction Program and the Airport Improvement Program. The Highway Planning and Construction Program operates under the Department of Transportation. It exists, according to the U.S. Catalog of Federal Domestic Assistance, to:

To help State departments of transportation (State DOT) to plan, construct, and preserve the National Highway System (NHS), an integrated, interconnected transportation system important to interstate commerce and travel; for transportation improvements to Federal-aid highways and to bridges on all public roads; to foster safe highway design; to replace or rehabilitate deficient or obsolete bridges and to preserve bridges that are still in good condition; and to provide for other special purposes.<sup>15</sup>

This program primarily operates through the state for distribution to local governments. It is the major federal transportation program for counties in Kansas.

Another federal revenue source for local governments is the Airport Improvement Program, which helps “sponsors, owners, or operators of public-use airports in the development of a nationwide system of airports adequate to meet the needs of civil aeronautics.”<sup>16</sup> A third federal program that counties regularly use as a partnership with the state is the Federal Funds Exchange Program.

The Federal Funds Exchange Program is also known as the Surface Transportation Program (STP), and KDOT has an extensive description available online at: <https://www.ksdot.org/Assets/wwwksdotorg/bureaus/burLocalProj/BLPDocuments/FFE/Fund%20Exchange%20Program%20Guidelines.pdf>. The Funds Exchange/STP Program allows local public agencies (LPAs) to trade federal fund allocations with the Kansas Department of Transportation (KDOT) in exchange for state transportation dollars or with another LPA for their local funds. The exchange rate under the program is \$0.90 of state funds for every \$1.00 of local federal funds. The exchange rate exists because KDOT has the additional expense of providing state funds to match the exchanged federal funds. For more information on the Funds Exchange/STP Program, contact the KDOT Bureau of Local Projects at (785) 296-3861.

It is wise to regularly work with the Kansas Department of Transportation to determine whether there are additional grants available that may be helpful to your community, including the 402 Safety Program and the Transportation Revolving Fund. The following chart is a KDOT showing of local transportation projects, including: funding categories, the fund source, the federal-local fund ratio, KDOT descriptions, and KDOT contacts. For more information, visit: <https://www.ksdot.org/burlocalproj/default.asp>.

### KDOT Bureau of Local Projects

FUNDING CATEGORY	FUND SOURCE	FUND RATIO	COMMENTS	KDOT CONTACT
STP-County	FHWA	80/20	105 Counties Eligible on of Major Collector/Minor Collector	BLP **
Bridge Rehab/Replacement-Co.	FHWA	80/20	County Bridges with Suff. <80 or <50	BLP **
STP-Safety-County	FHWA	90/10	Former Hazard Elimination Program Procedures-County	BLP **
402-Safety-County	FHWA	Varies	Studies, Training, Manuals, etc.	BLP **
Federal Disaster Assistance	FHWA	100	Special Projects Approved By FHWA	BLP **
STP-Safety-Railroad	FHWA	Varies	Former RR Program Procedures	BOD **
STP-Transportation Enhancements	FHWA	80/20	Program for Environment, Trails & Historic Projects	BPM/OES **
Demonstration Projects	FHWA	Varies	Special Projects Approved by Congress	BPM/BLP **
Technology Transfer (LTAP Program)	FHWA/STATE	100	Program for KDOT to fund technology transfer (Contracted thru KU Transportation Center)	BR&M/BLP **
System Enhancements	STATE	Varies *	Special Projects Included in a Statewide Comprehensive Transportation Plan	BOD/BLP **
A. Economic Development	STATE	Formula	Project on any Road, Street, or Highway	BPM/BLP

\*May be State or Federal Funds\*\* DEFINITIONS:

STP = Surfacing Transportation Program

BLP = Bureau of Local Projects

BPM = Bureau of Program Management

LTAP = Local Technical Assistance Program

CMAQ = Congestion Mitigation Air Quality

BTP = Bureau of Transportation Planning

BTE = Bureau of Traffic Engineering

BOD = Bureau of Design

BR&M = Bureau of Research & Materials

OES = Office of Engineering Support

[Back to top](#)

#### 13.2.4 Federal Public Transit Programs

Another federal Department of Transportation program of interest to local authorities is 49 U.S.C. 5311, a formula grant program. The program provides funds for public transportation projects that address the “special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable.” <sup>17</sup>

The grants are only available for the purchase of capital, with a local match requirement of at least 20-percent of the capital cost. Kansas law provides that applicants must be members of the Coordinated Transit District to receive the 49 U.S.C. 5311 grant. States are the direct recipients of this grant, so this is another reason to stay in communication with KDOT authorities to ensure your county is diligent in securing available revenue. <sup>18</sup> There may also be state monies available for the purchase of capital and for operating subsidies. These state funds are used to complement and supplement the two federal programs discussed above.

[Back to top](#)

### 13.2.5 Transportation Training and Technical Assistance

The Kansas University Transportation Center (KUTC) conducts, coordinates, and promotes transportation research, training, and technology transfer to the state of Kansas and the surrounding region.

They offer a number of programs that provide assistance to counties, and their website—<https://kutc.ku.edu/>—is a great resource. The following provides an overview of the KUTC programs:

- **Kansas Local Technical Assistance Program (KS LTAP)**
  - This program provides a variety of services to public works and road and bridge managers and crew members in the state, as well as elected officials. Includes a quarterly newsletter, training programs, technical publications and training DVDs, a web site, and one-on-one advice. More information is available at <http://www.ksltap.org>. Many services are free.
- **Kansas LTAP Roadway Safety Assessment Program (RSA)**
  - This program provides assessments of road safety concerns along stretches of roads or at intersections and provides suggestions for safety improvements, including low-cost options. A free public service. For more information, call (785) 864-2593.
- **Kansas LTAP Equipment Loan Program**
  - Free loan program for two types of equipment: (1) traffic counters; and (2) a safety-edge "shoe" to install onto an asphalt paver for creating a sloped edge rather than a straight drop-off. For more information, call (785) 864-2593.
- **Kansas Rural Transit Assistance Program (KS RTAP)**
  - This program provides a variety of services to rural transit agency managers and drivers in the state. Includes a quarterly newsletter, training programs, technical publications and training DVDs, a web site, and one-on-one advice. More information is available at [www.ksrtap.org](http://www.ksrtap.org). Many services are free.

[Back to top](#)

### 13.2.6 Community Development Block Grant (HUD) Funds

The Department of Housing and Urban Development is another federal program that distributed significant funds to Kansas counties. The HUD programs included: Home Investment Partnerships, Shelter Plus Care, Emergency Shelter Grants Program, Public and Indian Housing, Public Housing Capital Fund, Supportive Housing Program, Resident Opportunity and Supportive Services, and YouthBuild.<sup>19</sup> But the predominant program for Kansas is the federal Community Development Block Grant (CDBG).

The Kansas Department of Commerce administers the CDBG program in Kansas. Counties can use these grants to financially support community improvements, economic development, and discretionary or emergency funding needs. CDBG grants for economic development projects help create and retain jobs for low- and moderate-income persons, and to address community development needs. The state discretionary category of CDBG grants provide funding for imminent threat and for other emergency projects.

[Back to top](#)

### **13.2.7 Additional Federal Grants of Interest**

Though this list is not comprehensive, there are additional grants that Kansas counties secured in recent years.<sup>20</sup> Kansas counties worked with the Department of Justice and found wide-ranging grants: Edward Byrne Memorial Justice Assistance Grant Program, Public Safety Partnership and Community Policing Grants, Local Law Enforcement Block Grants Program, Drug Court Discretionary Grant Program, Missing Children's Assistance, and the Weed and Seed Program. The Local Law Enforcement Block Grants Program was the most widely used Department of Justice grant in Kansas. Kansas counties also worked with the Corporation for National and Community Service—an agency that works with Senior Corps, AmeriCorps, and the Social Innovation Fund. A number of Kansas counties used the Retired and Senior Volunteer Program for their respective communities.

[Back to top](#)

### **13.2.8 Kansas Department of Health and Environment (KDHE) Grants**

The Kansas Department of Health and Environment (KDHE) provides information regarding aid to local grant programs, with funding from both the state and federal levels.

KDHE's Bureau of Community Health Systems provides grant information relating to public health programs, including the Local Public Health Program. Their website (<https://www.kdhe.ks.gov/640/Local-Public-Health>) provides information on currently available grant programs. Counties may contact the Bureau of Community Health Systems via phone at (785) 296-1086.

Numerous environmental grants exist to assist local governments with compliance issues. KDHE's Bureau of Waste Management (<https://www.kdhe.ks.gov/168/Waste>) maintains a section of their website specifically regarding grants regarding solid waste planning, household hazardous waste collection/disposal, agricultural pesticide collection/disposal, small business waste collection/disposal, and solid waste plan implementation (<https://www.kdhe.ks.gov/700/Waste-Reduction-Public-Education-Grants>). Grant clearinghouses are the best source for information on other potential grants.

[Back to top](#)



### **13.2.9 Revolving Loan Fund Programs for Wastewater Treatment Facilities**

The Environmental Protection Agency provides capitalization grants to state revolving-fund programs. The state revolving fund program provides a 20% match of the federal grant. This money is placed in a revolving fund, which is designed to serve as a perpetual source of low interest financing for local wastewater treatment facilities. The grants serve to improve watershed quality and often contribute to agricultural, rural, and urban runoff control.

[Back to top](#)

### **13.2.10 Land and Water Conservation Grants**

The U.S. Department of Interior offers the Land and Water Conservation fund grant program for cities and counties. The purpose of the grant is the acquisition and development of areas for outdoor recreation purposes. The Kansas Department of Wildlife and Parks administers the grant for Kansas. The funds from the program are to be used for land acquisition or park or general outdoor facility development. The maximum amount available for each project is \$75,000, but the grant program is a matching program, meaning the actual amount that can be issued for each project is \$150,000.

[Back to top](#)

### **13.2.11 Other information**

For further information on federal grants available to local government, refer to the Catalog of Federal Domestic Assistance published by the Office of Management and Budget (<https://sam.gov/content/assistance-listings>). In addition to the online resource, this catalog is also available at libraries designated as federal publication depositories. For further information on application procedures for state administered grants, contact the individual state departments.

[Back to top](#)

### **13.2.11 Conclusion**

The federal government is a worthwhile source that counties can use for funding projects. The state administers many of the federal grants, including apportionment and distribution, but there are also grants that go directly to local governments. The grants listed in this chapter are not all-inclusive of programs available to counties. For further information on grants, contact the appropriate federal or state agency.

[Back to top](#)

## **ARTICLE 3: TAX EXEMPTIONS**

### **13.3.1 Exemptions Generally**

Counties in Kansas are not required to pay certain state and federal taxes. One noticeable difference between federal taxes and state taxes is that the federal statutes do not

differentiate between governmental and proprietary functions. Government functions are services only government provides, and proprietary functions are services a private entity can perform, not exclusive to government. At the federal level, if the county is tax exempt, it is exempt whether the function is governmental or proprietary. But with state taxes, the county may be exempt for governmental purposes, but not for proprietary purposes. The following section addresses how this applies to sales taxes.

[Back to top](#)

### **13.3.2 Sales Tax Exemptions**

Counties and other exempt public agencies do not have a sales tax exemption number but use an exemption certificate. An exemption certificate is a document “a buyer presents to a retailer to claim exemption from Kansas sales or use tax.”<sup>21</sup> The state provides exemption numbers only for contractors purchasing materials for a governmental project exempt from sales taxes. Entities may apply for certificates through the Kansas Department of Revenue website at: <http://www.ksrevenue.org/taxclearance.html>.

[Back to top](#)

### **13.3.3 Ad Valorem Tax Exemptions**

Generally, the property owned and used by counties is tax exempt.<sup>22</sup> Some property may, however, require a claim for exemption.<sup>23</sup> If the Kansas Board of Tax Appeals authorizes the exemption only for a specified period of years (e.g., industrial revenue bond financed property), counties must file annual claims for exemption each year by March 1.<sup>24</sup>

[Back to top](#)

### **13.3.4 Exemption From Execution**

Except for judicial tax foreclosure, all county property is exempt from levy, execution, and sale. A court judgment cannot impose a charge or a lien against county property. This exemption does not excuse the county from the obligation of levying taxes or otherwise providing funds to pay judgments that have been levied against the county.

[Back to top](#)

### **13.3.5 Federal Tax Exemptions**

Counties are exempt from some federal taxes, such as the income tax and certain excise taxes. But the federal exemptions have different procedures for different exemptions, such as the federal exemption for federal motor fuel taxes, which has a procedure that counties must follow to qualify for the exemption. Remember that these policies can change, so keep current on what federal law requires.

[Back to top](#)

### **13.3.6 Conclusion**

It is important for county officials to know what areas are exempt from state and federal taxes, and what procedures to follow in order to keep the county from paying unnecessary taxes.

[Back to top](#)

## CHAPTER 13 ENDNOTES

---

<sup>1</sup> For a history of the LAVTR see, Michael J. Smith, *A Brief History of the Kansas Sales Tax, LAVTR, and Their Impact on Local Government*, 93 Kansas Government Journal 114 (2007). The Kansas Government Journal can be found online at the League of Kansas Municipalities website at [www.lkm.org](http://www.lkm.org).

<sup>2</sup> K.S.A. § 79-2965.

<sup>3</sup> K.S.A. § 79-2966.

<sup>4</sup> K.S.A. § 79-41a02.

<sup>5</sup> K.S.A. § 79-41a01.

<sup>6</sup> K.S.A. § 79-41a04(b)(3).

<sup>7</sup> *Id.* at (c).

<sup>8</sup> K.S.A. § 79-4217.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> K.S.A. § 79-4227.

<sup>12</sup> *Id.*

<sup>13</sup> K.S.A. § 79-4217.

<sup>14</sup> K.S.A. § 79-4227.

<sup>15</sup> “Assistance Listings.” (Formerly called the Catalog of Federal Domestic Assistance)

<https://sam.gov/fal/1093726316c3409a8e50f4c75f5ef2c6/view> (accessed March 6, 2023).

<sup>16</sup> *Id.*

<sup>17</sup> 49 USC § 5310.

<sup>18</sup> “Enhanced Mobility of Seniors & Individuals with Disabilities - Section 5310.” U.S. Department of Transportation

<https://www.transit.dot.gov/funding/grants/enhanced-mobility-seniors-individuals-disabilities-section-5310>

(accessed March 6, 2023).

<sup>19</sup> “USA Spending,” Office of Management and Budget, [www.usaspending.gov](http://www.usaspending.gov) (accessed March 6, 2023).

<sup>20</sup> *Id.*

<sup>21</sup> “Kansas Exemption Certificates.” Kansas Department of Revenue, Pub. KS-1520 (Rev. 11/15). Available at

<http://www.ksrevenue.org/pdf/pub1520.pdf> (accessed March 6, 2023).

<sup>22</sup> A.G. 91-25; K.S.A. § 79-201a.

<sup>23</sup> K.S.A. § 79-213.

<sup>24</sup> K.S.A. § 79-210.

## **Chapter 14: INVESTMENT OF COUNTY FUNDS**

### **ARTICLE 1: COMPLYING WITH THE PUBLIC DEPOSIT LAW AND THE GENERAL INVESTMENT STATUTE**

#### **14.1.1 Introduction**

There is no more important responsibility as a county commission than to safeguard the public's funds from loss or unauthorized use. The statutes reflect this with restrictive policies and procedures dictating where government must maintain and invest public funds. Kansas law authorizes three categories of public funds. The first are active funds—those used on a daily basis for receipt and payment. The second are idle funds—those unneeded in the short-term and thus available for longer-term investments. The third and final category is special funds—funds held separate based on statute or legal documents, such as bond proceeds.

[Back to top](#)

#### **14.1.2 Active Funds**

Active funds that the governing body regularly uses are ineligible for investment according to K.S.A. § 12-1675. Permissible accounts for active funds include checking, negotiable order for withdrawal (NOW), savings, and money market deposits. Also, investment in the Overnight Municipal Investment Pool (OMIP) is authorized. All these investments have no minimum maturity and allow withdrawals on demand without penalty.

[Back to top](#)

#### **14.1.3 Designation of the Depository of Funds**

Counties must determine where to keep county funds. The Board must officially designate and record by official action and record in the minutes, the bank or banks, savings and loan association, or savings bank where the county funds will be located.<sup>1</sup> There are restrictions on where the financial institution may be located. The financial institution must have a branch office in the county.<sup>2</sup> The exception to this requirement is that counties may look to adjoining counties if the financial institutions in the county fail to provide an adequate bid.<sup>3</sup> The statutes infer that counties should occasionally seek competitive bids for financial services.

[Back to top](#)

#### **14.1.4 Deposit Pledging and Collateral**

One of the primary concerns for public finance officers is to ensure that public money is properly secure. All active funds, time deposit, open accounts, certificates of deposits, and repurchase agreements require collateralization—a proper pledge as security. K.S.A. § 9-1402 provides guidance as to the types of securities that are acceptable for securing public deposits. Public finance officers must understand pledging requirements, security agreements, and security values. If there are questions concerning whether a certain security can be pledged,

contact the Kansas Bank Commissioner at (785) 296-2266 or [www.osbckansas.org](http://www.osbckansas.org). Collateral options include:

- 1) Personal bond in an amount double the deposit;
- 2) Corporate Surety Bond of a surety bond company authorized to do business in the state of Kansas;
- 3) Obligations insured as to principal and interest by the United States or any federal agency, including letters of credit and securities of United States sponsored corporations; and
- 4) Bonds of the State of Kansas.

[Back to top](#)

#### **14.1.5 Idle (Inactive) Funds**

K.S.A. § 12-1675 provides guidance for the investment of idle public monies of governmental subdivisions, units, and entities. Idle funds are monies that are not immediately required for the purposes of original collection and are not subject to investment regulation by another statute. Article 2 discusses the limited investment options for idle funds.

[Back to top](#)

#### **14.1.6 Special Funds**

There are various special funds—generally monies in non-operating funds—that the county controls but can only invest according to state statute. For example, counties must invest building reserve funds in accordance with K.S.A. § 19-15,116, the general building statute. Counties must invest bond issue proceeds that are not immediately needed according to K.S.A. § 10-131. If a Kansas law provides guidance for a specific type of monies, counties should not use the general investment law.

[Back to top](#)

### **ARTICLE 2: INVESTMENT OPTIONS**

#### **14.2.1 Introduction**

Local governments may invest in a statutory menu of investment options, which are generally considered among the safest options. Even so, only skilled money managers should manage them. A brief discussion of investment instruments follows.

[Back to top](#)

#### **14.2.2 Temporary Notes or No-Fund Warrants**

These financial tools are short-term bonds, sometimes known as “bond anticipation notes.” The investing governmental unit issues these notes and warrants, and local governments often use the tools for temporary financing of capital improvement projects.

[Back to top](#)

### **14.2.3 Treasury Bills or Notes**

Counties may purchase U.S. Treasury bills or notes with maturities not exceeding two years. They are available from the Federal Reserve Bank of Kansas City, Missouri and certain securities dealers. The advantages of U.S. Treasury bills are safety of principal, high liquidity, and the interest rates that approximate the current money market rates.

The Treasury issues bills at a discount, and the yield is equal to the difference between the discounted purchase price and the par value (the amount of money due at maturity). Bills are now issued with maturities ranging from 91 days to one year and in denominations of \$10,000 and \$100,000. Counties can buy these larger for shorter terms because they have an active secondary market.

The full faith and credit of the United States government is pledged to the payment of these bills or notes, so there is virtually no credit risk. Treasury bills and notes provide a highly liquid investment for short-term requirements and are especially appealing to a small municipality with limited investment funds and a short-range spending program.

Note that counties may invest idle monies in treasury bills and notes under K.S.A. § 12-1675 only if local banks, savings and loan associations, and savings banks eligible for investments cannot or will not make Certificate of Deposit (CDs) or Time Deposit Open Account (TDOAs) available to the county at interest rates equal to or greater than the investment rate defined in K.S.A. § 12-1675a(g).

[Back to top](#)

### **14.2.4 Certificates of Deposit (CD's) and Time Deposit Open Accounts (TDOA's)**

A CD is a time deposit with a bank or savings and loan association that pays a specified interest rate if a given sum is left on deposit for a specified period of time—the longer the time, the higher the interest rate.

- (1) Negotiable CDs – a negotiable CD can be sold on the money market if the depositor needs the funds before the maturity date. In negotiable CDs, the municipality and the issuing bank can negotiate the interest rate and time period of the security. Or the municipality might choose to solicit bids from banking institutions, stipulating the minimum interest to be paid and establishing the maturity dates. Larger banks in the U.S. issue negotiable CDs to the bearer, usually issued in denominations of \$100,000 or more.
- (2) Non-negotiable CDs – If a CD is non-negotiable, an interest penalty is assessed if the deposit is withdrawn before the maturity date.

In comparison to passbook savings accounts, a certificate of deposit is equally safe, has a higher yield, but if non-negotiable, has less liquidity. Emergency liquidation of

a CD forfeits some interest, and may jeopardize the principal. Such safety is not always available with governmental issues should it become necessary to liquidate an investment. In a period of rising interest rates, for example, an investor may need to sell a treasury bill at a higher discount than was granted on the purchase price. However, the development of a diversified portfolio of limited term investments should eliminate such losses if emergency liquidation is necessary.

The Federal Deposit Insurance Corporation (FDIC) currently insures Time Deposit Open Accounts (TDOAs) and Certificates of Deposits (CDs) up to \$250,000. Any CDs over the \$250,000 FDIC coverage require collateralization, which is discussed in section 14.1.4.

[Back to top](#)

#### **14.2.5 Repurchase Agreements**

A repurchase agreement is the sale of securities by a bank or a securities dealer to another party with a simultaneous commitment by the dealer to buy back the securities later. The earnings equal the spread between the two selling prices and are negotiated between the two parties. In investment vocabulary shorthand, the contract is called a “repo.”

K.S.A. § 12-1675 specifies several necessary conditions when investing in repurchase agreements. They include: locations of the financial institutions, investment quality of the underlying securities, control of the underlying securities, and the interest rates offered by the financial institutions.

The most common form of report has a fixed date for the repurchase. An overnight agreement covers one day. An open agreement remains in effect until one of the parties decides to terminate it. The advantage of repurchase agreements is that the investor risks no principal loss, is assured of a fixed rate of return, and is not subject to the market fluctuations of the particular investments held by the bank or securities dealer.

Remember, adequate pledged collateral is the repurchase agreement’s underlying security in case of default. Title to the securities pledged as collateral on the repo should be perfected for the county and transferred to a third party depository for safekeeping.

[Back to top](#)

#### **14.2.6 Municipal Investment Pool of Kansas (MIP)**

The state of Kansas Municipal Investment Pool (MIP), which is authorized by K.S.A. § 12-1677a, offers participants safety of principal, liquidity, and a competitive market rate on short-term investments. All monies deposited in the pool are promptly invested as part of the “Pooled Money Investment Portfolio” in securities authorized by state statutes. Local government or agency officials maintain discretion over their investment including the amount and maturity. The MIP has operated since 1992 and has since returned millions of dollars in interest income to cities, counties, school boards, and other pool members across Kansas.

Counties must first offer available idle funds for deposit to eligible banks, savings and loans and federally chartered savings banks that have home offices or branches in the investing community. State statute requires that eligible financial institutions pay the statutory investment rate calculated by the Pooled Money Investment Board. The investment rate is printed weekly in the Kansas Register. It is also available by calling (785) 296-3372, or through the website at: <https://pooledmoneyinvestmentboard.com/> .

If a financial institution does not agree to pay the PMIB rate, the county may use the Pool or other authorized investments.

[Back to top](#)

#### **14.2.7 Pooled Money Investment Board Instruments**

The Pooled Money Investment Board may invest monies in the following instruments:

- (1) Obligations that are insured as to principal and interest by the United States, a federal agency, or U.S. sponsored enterprises that meet federal security requirements, excluding mortgage backed securities;
- (2) Interest-bearing time deposits in Kansas bank and savings and loans associations;<sup>4</sup>
- (3) Repurchase agreements;
- (4) Commercial paper that does not exceed 270 days to maturity and that has a superior credit rating by a nationally recognized investment rating firm;
- (5) Corporate bonds that have received one of the two highest ratings by a nationally recognized investment rating firm;
- (6) Loans pursuant to legislative mandate;
- (7) Investment in IMPACT act projects and bonds (K.S.A. § 74-8920); and
- (8) Preferred stock of Kansas Venture Capital, Inc.

[Back to top](#)

#### **14.2.8 Pooled Money Investment Choices**

There are several pooled investment choices. Generally, the longer the maturity period, the higher the yield to maturity will be. The options listed below are an overview, and it is best to visit the PMIB website to learn more.

- (1) Overnight Municipal Investment Pool (OMIP). This pool is designed for active funds. It features daily liquidity, which provides immediate access to funds for municipalities who wish to “park” funds for a brief period.



- (2) Fixed Rate Investment Pool. This pool has four options – from 30 days to 365 days to maturity.

[Back to top](#)

#### **14.2.9 Opening a Pool Account**

To open a Pool account, call (785) 296-3372 at the Pooled Money Investment Board office and request a Pool Packet. This Pool Packet contains all of the necessary documents, with instructions for completion, which you will need to open your account. Or visit the website at <https://pooledmoneyinvestmentboard.com/mip/openaccount.html>.<sup>5</sup> Keep in mind you must have a resolution from your governing body to participate in the Pool.

[Back to top](#)

#### **14.2.10 Direct Investment**

The governing body of any county that has a written investment policy approved by the governing body and the Kansas Pooled Money Investment Board, is authorized by K.S.A. § 12-1677b to invest in the pool. Visit the PMIB website for a full picture of investment options.

Investments can have a maturity of four years or less. This includes agency bonds, treasury notes and CDs. Note that K.S.A. § 12-1675a(g) still applies before investing in these additional options.

[Back to top](#)

#### **14.2.11 With the Trust Department of Commercial Banks**

Local governments can also invest their funds in trusts that are set up by the trust department of commercial banks. These banks should be located within the county.

[Back to top](#)

### **ARTICLE 3: OTHER ITEMS TO CONSIDER**

#### **14.3.1 Investment of Undistributed Taxes**

K.S.A. § 12-1678a requires the county treasurer to distribute actual or estimated tax receipts to the various taxing subdivisions before January 20, June 5, and October 31. The Board and the governing body of any taxing subdivision may agree upon a method of distributing tax collections and any interest accruals as an alternative to the schedule provided in the statute. Such agreements, however, cannot be forced upon the county.

[Back to top](#)

#### **14.3.2 Investments; Cash Basis and Budget Law**

Under K.S.A. §§ 12-1671 and 12-1672, investments constitute cash under the cash basis law, and monies disbursed for investments are not considered expenditures under the budget law. K.S.A. § 12-1678a requires that the interest earned on undistributed taxes be retained by the county and credited to its general fund. K.S.A. § 12-1677 requires any interest earned to be

credited to the general fund unless another state or federal statute requires the interest to be credited to another fund.

[Back to top](#)

### **14.3.3 Township Funds**

The question often arises about whether township funds can be invested in a bank that lies outside the county. The applicable statute is K.S.A. § 80-404, which says that all township funds must be deposited within the county that it resides in. The township must comply with all of the investment provisions contained in K.S.A. § 12-1675.

[Back to top](#)

## CHAPTER 14 ENDNOTES

---

<sup>1</sup> K.S.A. § 9-1401(a).

<sup>2</sup> *Id.*

<sup>3</sup> K.S.A. § 9-1401(c).

<sup>4</sup> K.S.A. § 75-4237.

<sup>5</sup> <https://pooledmoneyinvestmentboard.com/mip/openaccount.html> (Last assessed March 21, 2023).

## CHAPTER 15: FINANCIAL PLANNING

### ARTICLE 1: DEBT FINANCING

Complex state and federal laws and regulations govern the issuance of municipal bonds and other types of debt instruments necessary for financing. Commissioners, county counselors, and county finance personnel should work closely with the county's bond counsel—an attorney with special expertise in handling these complex legal matters. Counties should also consider hiring a financial advisor to assist in the structuring and issuance of bonds. The market conditions in which debt is sold change frequently, and a financial advisor who regularly is engaged in the marketplace will help the county obtain the best possible terms for its debt issue. A financial advisor represents the county, and only the county, in the sale of bonds. Finally, counties should adopt a debt policy that states when debt will be used to fund improvements. The policy should also contain debt capacity limits to help guide decision makers and to protect citizens from an excessive debt burden.

#### 15.1.1 Why Finance with Long-Term Debt?

Counties (like individuals and businesses) frequently find the cost of capital improvement is more than currently available operating monies. To balance budget items—often over several years—counties must use many funding sources. Used prudently, debt financing is a management tool that can finance infrastructure improvements, while maintaining administrative, public health and safety, and social programs through current revenues. Despite its usefulness, it is critical to avoid extending bond repayment beyond the useful life of the improvement.

[Back to top](#)

#### 15.1.2 What is a bond?

A bond is a written promise to pay a specific sum of money (called the “par amount,” the “face value,” or the “principal amount”) at a specified date or dates (called the maturity dates) together with periodic interest at a specified rate. Typically, a bond will be for \$5,000.00, and a bond issue will involve the sale of the number of individual bonds (called a “series”) needed to produce the desired level of bond proceeds for the county.

[Back to top](#)

#### 15.1.3 General Obligation Bonds and Revenue Bonds

**General obligation bonds** are the most secure debt instrument issued by Kansas counties. At the time of purchase, these bonds usually provide the lowest interest rate available in the financial markets for a similar length of maturing obligations. General obligation bonds may be used to finance a variety of public improvements including: public buildings, streets and roads, sewers, and water system improvements. All general obligation bonds are secured by the full faith and credit of the issuing county, which means the investors holding the bonds can compel

the county to levy sufficient taxes on all taxable tangible property in the county to repay the principal of and interest on the bonds.

Even though a county issues general obligation bonds, it may anticipate that revenues generated from a particular source (e.g., a utility system) will provide the necessary funds for payment of the principal and interest on the bonds. If the anticipated revenues are insufficient, however, the municipality must make the payments from other funds, including from ad valorem (property) taxes, if necessary. Kansas law provides that general obligation bonds, other than special assessment bonds, must mature within 32 years of issue. Special assessment bonds must mature within 22 years of issue.<sup>1</sup> Unless associated with a refunding issue, general obligation bonds in excess of \$2,000,000 must be sold at a competitive public sale.<sup>2</sup>

Generally speaking, the type of county project will determine the authority and method of bond authorization. Certain statutes require a referendum, while others allow the governing body to commence a project on its own initiative. The county's bond counsel will be able to advise commissioners regarding the requirements for specific bond issues.

General obligation bonds also include special assessment bonds. Special assessment bonds are those bonds used to finance infrastructure supporting the development and use of privately owned land. While these bonds are secured by the full faith and credit of the issuing municipality, bond payments are funded by assessments levied against the benefitted property. Special assessment bonds are typically initiated by petition of affected property owners, but the governing body may also initiate the process with affected property owners having a right to protest the commencement of the project.

**Revenue Bonds**, in contrast to general obligation bonds, do not carry the full faith and credit of the county; they are secured by one or more specific non-ad valorem revenue sources. Revenue bonds therefore carry a higher risk of nonpayment, because if the pledged revenue sources are insufficient to repay the debt, the investors cannot compel the county to levy taxes for debt repayment. Because of this perception of risk, revenue bonds usually have a higher interest rate than similar term and quality general obligation bonds. (Note that the county *can* repay revenue bonds with property taxes, but investors cannot compel it to do so). Municipalities often use revenue bonds for municipal electric, water, and sewer utilities. Other examples of revenue bonds are industrial revenue bonds, multi-family or single-family housing revenue bonds, sales tax revenue bonds, or public building commission lease revenue bonds.

Revenue bonds may be secured by a gross- or net-revenues pledge. A gross-revenue pledge is one that pledges payment of debt service the specified revenues before use of them to pay any other expenses. A net-revenue pledge is one that pledges for payment of debt service by specified revenues remaining after deduction for payment of other authorized expenses. For example, a gross-revenue pledge for utility system revenue bonds would require the county to use the utility revenues to pay principal and interest obligations before using them to pay for system operation and maintenance; a net-revenue pledge makes the bond safer for bondholders because the municipality uses revenue to pay debt service first.

Kansas law allows maturation rates of 40 years for revenue bonds. They are permitted to be sold at public or negotiated sale and may have a provision for citizen protest prior to authorization and issuance. The following section offers descriptions of revenue bonds.

**Public Building Commission Revenue Bonds.** Kansas law authorizes cities and counties to create public building commissions (PBCs).<sup>3</sup> A Board may create a PBC with a resolution. The PBC may consist of three to nine members, as appointed by the governing body. A PBC may finance buildings or facilities maintained and operated for a county including a county courthouse, county office building, or detention facility and lease the buildings or facilities to a county. PBC leases may be for a term of up to 50 years and are valid notwithstanding the Kansas Cash Basis Law and Kansas Budget Law.<sup>4</sup> A PBC must fix rental rates in the lease sufficient to provide for repayment of the debt issued by the PBC to finance the leased premises.

A PBC may issue revenue bonds to finance buildings or facilities. A PBC must, however, adopt a resolution declaring it necessary to finance a project. The resolution must be published once a week for two consecutive weeks in the official newspaper of the municipality. A referendum is required if a protest petition is filed by not less than five percent of the electors of the applicable municipality within thirty days after the last publication. A city or county may exempt all or certain PBC bond issues from the notice, protest, and referendum requirements through a home rule charter resolution. PBC bonds do not factor into the computation of bonded indebtedness for the purpose of determining the county's statutory debt capacity.

**Industrial Revenue Bonds/Private Activity Bonds.** Cities and counties can issue Industrial Revenue Bonds (IRBs) for the purpose of financing facilities to promote, stimulate and develop the municipality's general economic prosperity.<sup>5</sup> Facilities financed in this method include health care, industrial, commercial, and agricultural facilities. The bonds are payable solely and only from revenues derived from payments made under a lease agreement between the county and the beneficiary of the facility. The bonds are not payable in any manner from taxation. Federal laws enacted in 1986 severely restricted the types of facilities that can be financed on a federal tax-exempt basis. Kansas law, however, exempts IRBs from sales tax, and IRB-financed facilities (other than certain retail facilities) may be exempted from ad valorem property tax for up to 10 years. Prior to the issuance of certain IRBs, a public hearing may be required. Municipalities whose ad valorem property tax may be affected must be notified of the proposed issuance, and in some cases must consent to the issuance of the IRBs.

Remember that Private Activity Bond statutes (K.S.A. § 74-5058 *et seq.*) require funding approval from the Department of Commerce for this type of funding mechanism because of an annual cap on the amount the state may issue. The proposed bond beneficiary and their counsel should coordinate and advise the county as to the availability and requirements.

**Housing Revenue Bonds.** Kansas counties may issue revenue bonds to finance multi-family housing projects or single-family residences for first-time home buyers.<sup>6</sup> The revenues from the housing units provide the security for the bonds—not taxation. It is typically larger counties

that use these bonds in conjunction with inter-local cooperation agreements allowing the use of bond proceeds to finance housing needs.

**Sales Tax Revenue Bonds (STAR Bonds).** STAR Bonds are a state financing program that allows city governments to issue bonds that are repaid by all of the revenues received by the city or county from any transient guest taxes, local sales taxes, and use taxes that are collected from taxpayers doing business within that portion of the city's redevelopment district to retire special obligation bonds. A STAR Bond is a Sales Tax Revenue Bond with a 20-year repayment period. The exception to this is an auto racetrack facility, which the Legislature granted a 30-year repayment period. A STAR Bond project must meet minimum levels of capital investment and projected gross annual sales revenue. Any project including a gambling casino is specifically excluded from use of STAR Bonds.

**Certificates of Participation (COPs).** COPs are similar to bonds because they raise funds to finance projects. But instead of investors receiving a financial paper of return, the investor receives a leasing share in the project. The National Association of Counties (NACo) provides a more comprehensive definition; a COP is:

[a] form of lease obligation in which the county enters into an agreement to pay a fixed amount annually to a third party, usually a nonprofit agency or a private leasing company. Otherwise, they do what municipal bonds do: They raise money to acquire equipment or construct a facility. According to municipal finance experts, almost anything can be engineered for lease. COPs are similar to bonds, but are not legally classified as such, meaning that state and local governments can issue them without voter approval and without affecting their overall bonding capacity.<sup>7</sup>

This may provide another financing tool for your community.

[Back to top](#)

#### **15.1.4 Refunding Bonds**

Refunding bonds are bonds issued to retire bonds already outstanding. Counties may issue refunding bonds to exchange notes with current holders of the outstanding bonds.<sup>8</sup> In addition to empowering counties to refund bonds, K.S.A. § 10-427 also authorizes refunding interest on bonds or both bonds and interest, if advantageous to the county. Refunding bonds are exempt from the statutory limitation of bonded indebtedness.

Counties typically sell refunding bonds when the markets allow municipalities to take advantage of lower interest rates to take advantage of lower interest rates to reduce annual principal and interest payment obligations. Because transaction costs occur with any bond issue, the refunding bond issuance is often larger than the amount of bonds being refunded. To assure the refunding bond issue truly improves the financial position of the county, governing bodies often specify a minimum amount of savings—typically expressed as the percentage the

net present value of the annual savings is of the refunded principal – that should be obtained in any refunding bond issue.

[Back to top](#)

#### **15.1.5 Public Sales**

Municipal bonds must be sold at public sale.<sup>9</sup> The Board is in charge of the sale of the bonds and must publish notice of the sale one time in the county newspaper and in the *Kansas Register*. The notice must be published between six and 30 days before the sale. K.S.A. § 10-106 provides the necessary information for the notice.

[Back to top](#)

#### **15.1.6 Signing**

The Board Chairperson signs all bonds issued by the county.<sup>10</sup> The chairperson also signs the interest coupons attached to the bonds. The county clerk attests the chairman's signature. It is possible to have interest coupons that are attached to any bond signed with a facsimile signature of any officer required by law to sign.

[Back to top](#)

#### **15.1.7 Registration**

Because of federal requirements, tax-exempt municipal securities, including bonds, no-fund warrants, and temporary notes must be registered.<sup>11</sup> This means the county must maintain a record of the owner of each bond.

Counties often use a registration service called the Depository Trust Company or DTC. Instead of the county issuing individual bond certificates to each investor, the DTC will serve as owner of record for the entire bond issue. The county will print and sign a single bond certificate. DTC will maintain an electronic record of the individual investors in the bond issue, who will be referred to as the "beneficial owners" of the bonds. The county will pay all interest and principal obligations to DTC, and DTC will in turn distribute the money to the beneficial owners.

[Back to top](#)

#### **15.1.8 Bonded Indebtedness Limitations**

The general bonded debt limitation for counties is set at 3% of assessed valuation.<sup>12</sup> Some types of indebtedness do not count toward debt limitation.

The Kansas Cash Basis Law provides that unless otherwise provided, it is unlawful for the governing body of any Kansas municipality (defined to include counties) to create any indebtedness in excess of the amount of funds actually on hand in the treasury of the municipality at the time for such purpose.<sup>13</sup> K.S.A. § 10-1116 provides certain instances under the Kansas Cash Basis Law that the county may exceed the limitations on indebtedness, including when: (1) payment has been authorized by referendum in the county; (2) provision has been made for the issuance of bonds or temporary notes as provided by law; (3) provision has been made for payment by the issuance of no fund warrants authorized by law and in the



manner, and limited in amount as prescribed by law; (4) provision has been made for a revolving fund for the operation of any municipal airport financed and sustained partially or wholly by fees, rentals, proceeds from the sale of merchandise or charges for rendering services, received from the users of such airport; (5) provision has been made for payment pursuant to a service agreement entered into pursuant to K.S.A. § 12-5503, and amendments thereto; or (6) the indebtedness is created by a county in establishing a post-employment benefits trust fund in accordance with K.S.A. § 12-16,102.

[Back to top](#)

#### **15.1.9 Short Term Financing; Temporary Notes**

Counties may issue short-term financing to finance construction prior to the issuance of long-term debt and may repay the short-time financing with long-term debt or from a dedicated source of revenue.<sup>14</sup> Bond anticipation notes, sometimes called “BANs,” finance the construction of capital improvement projects by the county prior to the issuance of long-term debt. In order to issue BANs, the county must first authorize the long-term bonds. Counties may also issue notes as short-term obligations to provide funding in advance of anticipated federal or state grant funds. Counties secure these notes with the receipt of grant funds and may or may not be general obligations of the issuer. Notes may be sold at public or negotiated sale.

Counties in Kansas have significant flexibility in issuing notes. A county may issue notes that are to be repaid from ad valorem tax levies or other revenue sources without the necessity of issuing long-term debt. The term of these notes, however, cannot exceed four years. This procedure allows a county to defer the sale of long-term debt until project costs are fully incurred. The advantage of certainty regarding the size of a long-term bond issue is that it eliminates risks in multiple ways: (1) the risk that the county will sell more long-term debt than it needs—thereby incurring unnecessary interest costs; and (2) the risk that the county might experience unexpected increases of project costs, thus not having enough debt to pay the bills.

[Back to top](#)

#### **15.1.10 Lease Obligations**

Counties may not, under the Kansas Budget Law and Cash Basis law, use the normal lease-purchase agreements common to private businesses. Certain conditional agreements, however, are permissible. K.S.A. § 10-1116b specifies that a county may enter a lease agreement (with or without an option to buy) or an installment purchase agreement. The county must carefully craft the agreement to say that the county is obligated only to pay periodic payments or monthly installments under the agreement as may lawfully be made from:

- (1) Funds budgeted and appropriated for that purpose during the current budget year;  
or
- (2) Funds made available from any lawfully operated revenue producing source.

Carefully structured tax-exempt lease purchase financing can be used advantageously for certain purposes. Since most lease purchase agreements have a term of over one year, counties must register the agreements under the Kansas Bond Registration Law. They also may require review by the Attorney General of the State of Kansas.

[Back to top](#)

#### 5.1.11 No-Fund Warrants

No-Fund Warrants are instruments for short-term borrowing. They constitute evidence of indebtedness and draw interest for the holder. They are usually of short-term duration. Counties normally issue no-fund warrants when there is a shortage of money available in the budget or insufficient budget authority. They may be issued to finance the construction of public buildings, to purchase county equipment, and for other purposes authorized by law, ***but all other financing options should be exhausted prior to requesting authority for and issuing no-fund warrants.***

There are two situations that frequently result in the need to issue no-fund warrants:

- (1) Revenues are less than the amount anticipated in the budget and cash balances are insufficient to cover the shortfall; or
- (2) There is an unforeseen event that demands spending that was unanticipated in the budget, and for which existing uncommitted cash balances are insufficient.

Application of K.S.A. § 79-2938 applies when there is a shortage of revenues, and K.S.A. § 79-2939 applies in the event of unanticipated or unforeseen expenditures. Emergency statutes are covered in K.S.A. § 12-110a. Procedure under these statutes require a hearing prior to approval by the State Board of Tax Appeals (BOTA). BOTA provides application forms for no-fund warrants at [www.kansas.gov/bota/](http://www.kansas.gov/bota/). If you have questions about No-Fund Warrants call the BOTA at (785) 296-2388.

[Back to top](#)

#### 5.1.12 Conclusion

Counties can easily find themselves in a situation where they need more money than they currently have available. There are several ways a county can borrow money, both for a short-term period or for a long-term period. Under any circumstance the issuance of debt involves numerous legal and financial complexities, the understanding of which requires expertise not often found within the county governing body or staff. To maneuver through the legal and financial minefields, the county should consider contracting for the services of a bond counselor and a financial advisor to ensure the county remains on safe ground.

[Back to top](#)

## CHAPTER 15 ENDNOTES

---

<sup>1</sup> K.S.A. § 10-103.

<sup>2</sup> K.S.A. § 10-106(b).

<sup>3</sup> K.S.A. § 12-1757 *et seq.*

<sup>4</sup> K.S.A. § 79-2925 *et seq.*

<sup>5</sup> K.S.A. § 12-1740 *et seq.*

<sup>6</sup> K.S.A. § 17-2351.

<sup>7</sup> Jacqueline J. Byers, *Glossary of Public Finance Terms*, National Association of Counties 7 (2009), <http://www.naco.org/sites/default/files/documents/Glossary%20of%20Public%20Finance%20Terms.pdf>. (Last accessed March 21, 2023)

<sup>8</sup> K.S.A. § 10-427.

<sup>9</sup> K.S.A. § 10-106.

<sup>10</sup> K.S.A. § 10-105.

<sup>11</sup> K.S.A. § 10-107.

<sup>12</sup> K.S.A. § 10-306.

<sup>13</sup> K.S.A. § 10-1101 *et seq.*

<sup>14</sup> K.S.A. § 10-123.

## **CHAPTER 16: COUNTY SERVICES**

Aside from serving as an agent of the state, counties provide services for people and ensure the general health, welfare, and safety of its people. This chapter briefly describes the public services provided by most counties. These services include roads and bridges, refuse collection and disposal, traffic controls, fire protection, parks and recreation, law enforcement, public works, and other services. Kansas law authorizes counties to cooperate with other public agencies in providing these services (See Chapter 17, Intergovernmental Cooperation).

### **ARTICLE 1: ROADS AND BRIDGES**

#### **16.1.1 Roads and Bridges**

One of the most important county functions is the construction and maintenance of county roads and bridges. Statewide, road and bridge expenditures account for about 35 percent of all county-levied property taxes. There are three main approaches to maintaining roads within the counties: (1) the County Road Unit System; (2) the General County Rural Highway System; and (3) the County Township Road System. The following section addresses these systems.

[Back to top](#)

#### **16.1.2 County Road Unit System**

The majority of Kansas counties (65) have adopted the county road unit system, which authorizes the county to assume the financing and control of all township roads in addition to county roads. The county road unit system is outlined in Kansas statute—K.S.A. § 68-515b—and the Board may adopt it by resolution at a regular board meeting. If ten percent of the county electors file a petition with the county clerk opposing the adoption, the Board must submit the question to the electors of the county.

Upon adoption of the county road unit system, the township boards must pay to the county treasurer all unused funds that have been acquired for road purposes. The county treasurer credits this money to a special fund for each township and the Board expends these funds for construction and maintenance of roads in the township from which the money came.<sup>1</sup>

The township board also turns over to the Board all road machinery and equipment that the township has acquired. At the same time, the township board files with the county clerk the name of some qualified elector of the township who will serve as an appraiser on behalf of the township for valuation of the machinery or equipment.<sup>2</sup>

[Back to top](#)

#### **16.1.3 General County Rural Highway System Act**

Counties may also adopt a general county rural highway system plan in a manner similar to the adoption of the county unit plan.<sup>3</sup> The advantage to the counties under the General County

Rural Highway System Act used to be that counties could levy up to five mills on all the taxable tangible property located outside the unincorporated areas of the county, but only one mill would count toward the aggregate tax levy limit. However, the Legislature suspended all statutory fund mill levy rate and aggregate levy rate limitations on taxing subdivisions (including counties) with the Tax Reform and Relief Act of 1999.<sup>4</sup> Only three counties have adopted this system.

If this plan is adopted, all of the townships located within the county must pay the county treasurer all funds and monies earmarked for township roads. The county must put the individual township funds in a special fund for the construction and maintenance of township roads. In addition to the special funds, townships can still receive funds from the regular county road or bridge fund. The individual townships can also receive a credit to their special fund from taxes levied from the regular county road or bridge fund.

[Back to top](#)

#### **16.1.4 County Township Road System**

The County Township Road System is the default system if a county does not adopt an alternative system. Under the Township Road System, the county maintains the main traveled roads, including county federal aid routes, and those roads designated by the Board as routes designed for moving traffic between different areas of the county. Townships maintain local roads that are not within a city.

Prior to 1917, townships maintained all roads, but the county-township road system has been the method since 1917—unless the county elected another system.

The township and the county can enter into an agreement for the maintenance of the township road,<sup>5</sup> but if no agreement can be reached, the county can still maintain the road and charge the township for the maintenance.<sup>6</sup> If the county takes over part or all of the maintenance, it might be liable for negligence in the event of an accident caused by improper maintenance. If the township road is a dividing line between two townships, or two counties, the responsibility for maintenance falls on both townships and both counties.<sup>7</sup>

The county is responsible for bridges and culverts larger than 25 square feet of waterway opening on township roads. The county may also be the local authority for the establishment of stop signs and speed limits.<sup>8</sup>

[Back to top](#)

#### **16.1.5 Classification of Roads, Bridges, and Culverts**

Kansas requires classification standards for the county unit road system.<sup>9</sup> In counties that have not adopted the county unit road system, the Board, with the approval of the county engineer, must classify all roads according to their relative importance.<sup>10</sup> K.S.A. § 68-592 provides for a classification system for any county under the General County Rural Highway System Act, and K.S.A. § 68-1107 provides for the classification of bridges and culverts.

### **16.1.6 Connecting Links in Cities**

Under K.S.A. § 68-506f, the Board and the governing body of any city that has a population of less than 5,000 may enter into agreements for the maintenance of streets within cities that form connecting links in the county roads system or are classified as county minor collector roads and highways. The agreements may provide for payments or reimbursements to such cities. In the absence of an agreement or a charter resolution to the contrary, it is the duty of the county to maintain all such connecting links within the cities.

[Back to top](#)

### **16.1.7 Letting of Contracts**

K.S.A. § 68-520 authorizes counties to do county road work without a contract. K.S.A. § 68-520 states that the Board has the authority when constructing, surfacing, repairing, or maintaining to:

- (1) Let contracts for all or any part of the above work;
- (2) Buy the materials and contract for all or any part of the labor; or
- (3) Purchase and rent machinery, equipment, and employ labor under the direction of the county engineer.

Before the county commissioners can do the above road work, they (or another county officer designated by the Board) must file the approved plans, the specifications, and the cost estimates with the county clerk. K.S.A. § 68-521 states that if the county engineer's estimated cost is over \$25,000 the filing must be done 20 days before the time of letting. A county is not required to use a contractor for all improvements; they may use their own labor and materials. If they do so, a contract is not required to be let.<sup>11</sup>

All road and bridge contracts must conform to the budget, cash basis, and tax limitation laws, unless they are specifically exempt.

[Back to top](#)

### **16.1.8 Proceedings for Changes in Roads**

K.S.A. § 68-114 sets authority and procedures for laying out, relocating, altering, widening, or vacating a road for purposes of eliminating sharp turns or other dangerous places or for the construction of a road or for an extension of a bridge or culvert. If property is required for any such project, the Board may acquire it by purchase, condemnation, or by donation.

Only county commissioners can vacate township roads upon petition.<sup>12</sup> Further, the county can vacate the township road without a petition if the township road is no longer a public utility.<sup>13</sup> If the township road has been legally established, the township has the responsibility to open the road for public use.<sup>14</sup>

[Back to top](#)

### **16.1.9 Renting/Hiring County Machinery and Equipment**

The general rule is that no board of county commissioners or board of township trustees may rent or hire county or township machinery and equipment to residents of the county, township, or to any other person for private use. The Board may, however, rent or hire machinery and equipment for private use for road clearing purposes and may make reasonable charges for it.<sup>15</sup>

The State authorizes a board of county commissioners to rent or hire county machinery or equipment to any township or city located in the county.<sup>16</sup> The township trustees in any township may also rent or hire township machinery or equipment to the county or city in the county where the township is located.<sup>17</sup>

[Back to top](#)

### **16.1.10 Policy Considerations**

In allocating funds for each budget year, the Board must consider a number of policy considerations relating to roads and bridges. Some examples of policy considerations include:

- (1) How much does it cost your county to maintain its bridges and roads each year?  
Could these costs be reduced, and roads still be improved, by either:
  - (a) Constructing a permanent surface on certain roads; or
  - (b) Routinely sealing paved roads every four or five years.
- (2) Does your county set minimum construction standards including width for all newly dedicated roads?
- (3) Does your county road department fully realize opportunities to cooperatively use personnel and equipment of other departments, cities, or counties?
- (4) Is road equipment modern and dependable so as to avoid unnecessary waste of employee time and untimely delays in projects?
- (5) Are available funds from countywide sources spent equitably throughout the county, such as allotting funds equally throughout rural and urban areas and equally allotting between cities and townships?
- (6) Are there township roads that can be abandoned in counties that have adopted the County Unit Road System?
- (7) Are there roads that should be designated “minimum maintenance roads,” under K.S.A. § 68-5,102? (Article 11 contains sample resolutions).
- (8) Are all roads properly marked and signed?

- (9) Are truck load limits adequately enforced to prevent pavement and bridge damage?
- (10) Is there some kind of multi-year maintenance and improvement plan?

Some of these policy considerations may require state law evaluation. For example, counties potentially vacating a road or right-of-way must use the procedures outlined in K.S.A. § 68-102 or K.S.A. § 68-114. Both statutes require affirmative action on the part of the county. It is important to note that the lack of use of an open road does not destroy the right-of-way. The Attorney General has opined that a road may be considered opened: (1) when the path is unobstructed; (2) when it is traveled, however minimally; (3) when it is available for public use; or (4) when it is put in condition for public use. (A.G. 91-140.)

[Back to top](#)

## **ARTICLE 2: REFUSE COLLECTION AND DISPOSAL**

### **16.2.1 General**

K.S.A. § 65-3410 sets the principal laws relating to solid waste. Other state environmental regulations, such as air quality, also affect refuse collection and disposal activities.

K.S.A. § 65-3410 authorizes a city, county, or a combination to provide for the storage, collection, transportation, processing, and disposal of solid waste within its boundaries. The county has the power to purchase all necessary equipment, acquire all necessary land, build any necessary building, incinerator, or other structures, and to do all things necessary for a proper solid waste management system, including levying fees upon persons receiving the services.

Fees are set by resolution and imposed upon real property within the county. The fees must be classified by real property based on factors outlined in the statute, but are generally based on use, volume, and other factors reasonably related to disposal.

Delinquent fees constitute assessments against the respective parcels of land and are liens on the property. Assessments may be collected at the same time as the county ad valorem property tax and all laws relating to enforcement of property taxes are applicable.

Cities or counties may contract with any person, city, county, or other political subdivision or state agency to carry out their responsibilities. Refuse collection in Kansas is frequently provided by private haulers.

Any plan created by a county for solid waste management must be submitted to the Department of Health and Environment.



Enforcement of the solid waste act is by the county or district attorney. Examples of violations include open dumping, burning, and violating permit conditions.

[Back to top](#)

### **16.2.2 Policy Considerations**

- (1) Does your county have a comprehensive plan for refuse collection and disposal?
- (2) If charges are levied, are they adequate? Are they collected?
- (3) Does local refuse eventually end up at an approved sanitary landfill?
- (4) Does your county take full advantage of opportunities to cooperate with other local governments in providing solid waste management?

[Back to top](#)

## **ARTICLE 3: TRAFFIC CONTROLS**

### **16.3.1 General**

The Uniform Act Regulating Traffic in Kansas provides for most traffic activities in the State.<sup>18</sup> K.S.A. § 8-2001 notes that the traffic law is a uniform act, and no local authority shall enact or enforce any ordinance in conflict with the act unless expressly authorized. Local authorities may adopt additional traffic regulations that are not in conflict with the Act. K.S.A. § 8-2002 specifically lists the traffic regulation that may be exercised by local government.

As a general rule, counties and cities must adopt traffic regulations that comply with state law and state regulations. State law may apply to roads that are not covered by the Kansas Department of Transportation jurisdiction.<sup>19</sup>

Traffic controls come in many sizes, shapes, and configurations—from the eight-sided stop sign to the interconnected, traffic-actuated stop-and-go signal. Traffic controls also include pavement marking, school zones, load limits, and the county's many other resolutions that set forth local traffic control policy.

The Secretary of Transportation has adopted the Manual of Uniform Traffic Control Devices as the standard for public roads in Kansas including city, county, and township roads.

[Back to top](#)

### **16.3.2 Policy Considerations**

- (1) Are the major roads clearly identified with reflective road name signs?
- (2) Are traffic control signs properly and legally placed and in good repair?
- (3) Does your county keep a location map of traffic accidents to help evaluate the need for new or modified traffic control actions?

- (4) Is there a periodic review process to ensure that weight limitations for trucks and commercial vehicles are appropriate for county bridges and roads?
- (5) Have all traffic regulations (such as placement of load limit and speed limit signs) been approved by resolution and recorded in the minute book?

[Back to top](#)

## **ARTICLE 4: FIRE PROTECTION**

### **16.4.1 General**

Historically, the provision of fire protection has been primarily a city responsibility, with some townships and special districts providing fire protection to unincorporated areas. In recent years there has been increased county involvement in this function.

The Board of any county may organize one or more fire districts in any portion of the county not within an incorporated city.<sup>20</sup> In a few counties the entire county is within fire protection districts established by the county. Cities may request to become a part of a county fire district.<sup>21</sup> The Board is the governing body of each fire district within the county, and the county clerk is the secretary. The commissioners may place supervision of fire districts under a board of trustees.<sup>22</sup>

[Back to top](#)

### **16.4.2 Intergovernmental Cooperation**

The Board may enter into agreements to provide fire protection for other counties, cities, or townships that are located within or adjacent to the county. The county must have a fire department in order to enter into these types of agreements. Such an agreement fixes the terms and conditions for the county to furnish fire protection services to the fire district. Fire districts may enter into agreements with cities for joint construction, equipping, and maintenance of buildings.<sup>23</sup> The supervision and control of the fire department, however, lies with the city. Any fire protection benefit district or other special fire district may become a part of the county fire district. (Also see Chapter 17, Inter-governmental Cooperation.)

[Back to top](#)

### **16.4.3 No-Fund Warrants for Fire Equipment**

All counties are authorized, when permission is granted by the Kansas Board of Tax Appeals, to issue no-fund warrants to purchase fire equipment and to purchase or construct buildings to house such equipment.<sup>24</sup> Counties must repay all warrants and interest within five years from the first day of July following their issuance. Authority exists to create a special fund for the replacement of firefighting equipment.<sup>25</sup>

[Back to top](#)

### **16.4.4 Firemen's Relief Association**

A Firemen’s Relief Association is a private corporation, separate from the county. Its sole purpose is to administer the firemen’s relief fund, a fund dedicated to those injured or disabled while serving as a firefighter. Only the members of the department can be members of the association, and only persons appointed or employed by the governing body, or the board of trustees can be members of the department. To be entitled to funds from the state for the relief association from insurance premiums, the county must have adequate firefighting equipment valued at least \$5,000.<sup>26</sup>

[Back to top](#)

#### **16.4.5 Policy Considerations**

- (1) Does your county use its opportunities to contract or cooperate with other fire departments?
- (2) Does your department conduct a continuous training program in various aspects of firefighting?
- (3) Is equipment dependable and are facilities sufficient to properly house both equipment and personnel? Are vehicular equipment, hoses, and other specialized equipment routinely checked and tested?

[Back to top](#)

### **ARTICLE 5: PARKS AND RECREATION**

#### **16.5.1 General**

Counties have broad authority to develop and operate recreational facilities and activities.<sup>27</sup> Many counties provide recreational opportunities through county lakes, 4-H buildings, fairground facilities, memorial halls, and similar facilities. Some counties provide more extensive programs like swimming pools, golf courses, and zoos—often using intergovernmental cooperation agreements (see Chapter 17, Intergovernmental Cooperation).

[Back to top](#)

#### **16.5.2 Resolution and Regulation of Park Facilities**

The Board can, by resolution, establish and maintain public parks, museums, and recreation grounds. The Board can also adopt rules to govern the use of county park facilities. The county must issue notice before creating a park or recreational facility and before issuing bonds or levying taxes. The resolution is subject to a protest petition.<sup>28</sup>

The county can receive donations of property and money for recreational purposes.<sup>29</sup> The Board can levy a tax to fund the recreational programs or to pay principal and interest on bonds that have been issued.<sup>30</sup>

A county can establish a county board of trustees to supervise parks, museums, or recreational grounds created by the county. The board of trustees must have between three and nine members. The Board can vest limited or full board powers with the park trustee board.<sup>31</sup>

Persons who violate the board rules on recreational facilities and parks are guilty of a misdemeanor.<sup>32</sup>

A specific Kansas statute, K.S.A. § 19-2803c, allows a county to establish a county public lake and recreational grounds. The Board can choose to submit the question at an election and must submit the question to an election if a petition is filed.

The statutes addressing parks and recreation have separate sections pertaining to counties based on population size with independent statutes for Wyandotte and Johnson Counties. County commissions should consult with the county attorney or counselor to determine what statutes apply to their jurisdiction.

[Back to top](#)

### **16.5.3 Park and Recreation Aids**

There is a federal grant-in-aid program generally available to local governments for acquisition and development of areas for outdoor recreation purposes, which can include park and recreation facilities. See Chapter 13 of this desk book for additional grant information.

[Back to top](#)

### **16.5.4 Policy Considerations**

- (1) Does the county have park facilities available to all age groups in convenient locations?
- (2) Does the county's long-range development plan provide for acquisition of park facilities at times when costs are low?
- (3) Has the county attempted to stimulate donations or contributions to its park and recreation program?
- (4) Has the county considered the possibility of providing recreation related programs for the aged, including nutrition and transportation programs?

[Back to top](#)

## **ARTICLE 6: LAW ENFORCEMENT**

### **16.6.1 General**

The office of county sheriff dates back to the origin of the state, and although the statutory duties of the office have remained somewhat constant, the field of law enforcement has become increasingly complex. Law enforcement activities generally include prevention and

repression of crime, apprehension of offenders, recovery of property, and regulation of non-criminal conduct. Each law enforcement officer must have the training and knowledge to perform complex duties in these general areas of law enforcement.

[Back to top](#)

### **16.6.2 Primary Law Enforcement Responsibility**

The county sheriff is authorized to carry out the primary law enforcement responsibilities for the county.<sup>33</sup> The sheriff must appoint an undersheriff and may appoint deputies to assist in law enforcement activities.<sup>34</sup> The county sheriff also has statutory authority for the operation of the county jail.<sup>35</sup> Employee appointment, promotion, demotion, or dismissal within the sheriff's department is the sheriff's responsibility. The commissioners may, however, adopt universal personnel policies and procedures, a pay plan, and the operating budget.<sup>36</sup>

[Back to top](#)

### **16.6.3 Training Requirements**

All undersheriffs and full-time paid officers have one year from the date of their appointment to complete a basic course of police training, either at the state law enforcement training center or another accredited training center.<sup>37</sup> Part-time officers must receive accredited instruction prior to their permanent appointment. The Kansas Commission on Police Officer Standards and Training sets the required number of hours for both full and part-time officers. An annual continuing education requirement exists for full-time officers, who must receive 40 hours of instruction.<sup>38</sup>

If a person, elected as sheriff, is not a licensed police officer, that person shall complete the next full-time training academy, unless requirements are waived by the Kansas Commission on Police Officer Standards and Training (KS-CPOST).<sup>39</sup> Kansas law requires counties to cover the tuition, board, room, and travel expenses for the sheriff-elect to attend the training.<sup>40</sup> Counties may set other education, training, and experience requirements of their own and should do so in a formalized manner, such as the county's general personnel policy and procedures manual.

[Back to top](#)

### **16.6.4 Cereal Malt Beverages (Beer)**

Counties may issue beer licenses on an annual or calendar year basis. The governing body of any county may prescribe hours of closing, standards of conduct, and rules and regulations concerning the moral, sanitary, and health conditions of places licensed by the county to sell beer. The county may also prohibit the sale of beer within establish zones<sup>41</sup> and has the power to deny licenses to those applicants who fail to meet the statutory requirements set forth in K.S.A § 41-2703. However, counties do not have the authority to deny a Cereal Malt Beverage (CMB) license if the applicant meets the legal requirements. Townships may provide recommendations to the Board as to the approval and renewal of licenses of establishments within the township.<sup>42</sup> Revocation of a license is permitted if one of the violations outlined in K.S.A. § 41-2708 is found by the Board.

[Back to top](#)

### **16.6.5 Alcoholic Liquors**

Counties do not have any direct statutory powers to control the sale of alcoholic liquors either by retail stores, private clubs, caterers, or drinking establishments. The State Director of Alcoholic Beverage Control issues retail licenses in any township having a population of more than 11,000. The director also issues licenses for private clubs, although K.S.A. § 41-2622 provides for an annual county license fee for club licenses that can range from \$200 to \$500 if the club is located in the unincorporated portion of a county. This county license fee can only be imposed if the county passes a resolution establishing the fee. The governing body of any city or county may request that the director hold a hearing on whether any license should be revoked or suspended. The governing body shall provide the director with reasonable cause to believe a hearing is necessary, based upon factors included in rules and regulations by the secretary. The director may refuse the governing body's request if no reasonable cause exists.

The Board may override state law prohibiting alcoholic liquors in public places for special events occurring on public streets by passing a resolution allowing alcohol at the special event.

[Back to top](#)

### **16.6.6 Consolidated Law Enforcement**

Kansas gives limited statutory authority for a consolidated law enforcement agency that combines city and county law enforcement departments.<sup>43</sup> The voters of Riley County and the City of Manhattan approved a proposal to consolidate law enforcement agencies in 1972.

The State also authorizes counties to contract with cities to provide for municipal ordinance enforcement.<sup>44</sup> Townships may similarly contract with counties for sheriff deputies to provide police protection within the township, if the county in which the township is located contains a city with a population over 100,000 people.<sup>45</sup> The Board must approve any agreement regarding contribution of funds negotiated by the Sheriff and township.

[Back to top](#)

### **16.6.7 Policy Considerations**

- (1) Is the work of the county sheriff's department closely coordinated with other nearby law enforcement agencies? Are some responsibilities such as communications and jail jointly operated? Are they provided on a contract basis?
- (2) Has the county established standards for employment and conduct of officers?
- (3) Is equipment dependable under routine and emergency conditions?
- (4) Do departmental records provide a complete history of all known offenders and offenses?

- (5) Does the sheriff's office work closely with local schools, civil defense, and other agencies and departments? Are interagency plans worked out for day-to-day and emergency operations?
- (6) Are law enforcement services basically distributed according to when and where crimes occur or may be expected to occur?
- (7) Are all employees adequately trained?

[Back to top](#)

## **ARTICLE 7: PUBLIC WORKS**

### **16.7.1 General**

Counties may use resolutions to establish a Department of Public Works.<sup>46</sup> Resolutions should cover all functions of the county engineer that are required by law. A department of public works created under this statute must have a division of highways, which includes construction and maintenance of highways, roads, bridges, culverts, signing, and other related activities. The resolution may also establish other divisions, including: (1) maintenance of public buildings, grounds, and facilities; (2) maintenance of public parks and recreation facilities; (3) construction and maintenance of any sewers, drainage facilities, and flood control projects; (4) construction and maintenance of airport facilities; (5) solid waste management functions; and (6) other public works functions or services that are considered beneficial for an efficient and effective performance of county government.<sup>47</sup>

[Back to top](#)

### **16.7.2 Administration**

The statutes provide for the department to be organized on a professional basis, with the director being the county engineer who has "full authority to manage and direct the department and its employees subject to the general supervision of the Board acting as a governing body."<sup>48</sup> This sentence is best interpreted to mean that the administration of the department of public works is separate from the policy-making function of the Board; meaning the director of public works handles the administration of the department (how to accomplish the job) and the Board decides policy (what projects to build).<sup>49</sup>

[Back to top](#)

### **16.7.3 Service Agreements**

K.S.A. § 19-4503 allows a county with a public works department to provide public works services to political subdivisions in the county. Many townships, special districts, and smaller cities do not have the money, personnel, equipment, or volume of work to efficiently perform public works services. A county with a department of public works may enter into agreements with these municipalities to provide needed services, with the municipality reimbursing the county for the direct and indirect costs of providing the services. Examples of this shared resource include cemetery districts contracting for county maintenance of their cemeteries and small cities contracting for routine maintenance of residential streets or for sewage services.

[Back to top](#)

## ARTICLE 8: EMERGENCY MANAGEMENT

### 16.8.1 General

Each county is required to designate an agency or department responsible for emergency management duties.<sup>50</sup> The duties of these agencies are defined as:

“... the preparation for and the carrying out of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters.”<sup>51</sup>

In the alternative, a county may participate in an inter-jurisdictional disaster agency provided in K.S.A. § 48-930. If a county participates in an inter-jurisdictional agency, it cannot create a separate county agency.<sup>52</sup> The Governor creates an inter-jurisdictional agency via order after determining that adjoining counties would be better served by creation of an inter-jurisdictional disaster agency.

The [Kansas Adjutant General](#) is also a helpful resource regarding emergency planning at the county level.

[Back to top](#)

### 16.8.2 County Requirements

Kansas Administrative Regulation (K.A.R.) 56-2-2 requires the county to establish and provide a copy of the following items to the Division of Emergency Management within the Adjutant General's Department:

- (1) A resolution establishing a disaster agency;
- (2) Appointment of a coordinator to head the agency;
- (3) Outline of the basic authority of the agency before, during, and after a disaster emergency;
- (4) Outline of the basic functions of the agency;
- (5) Outline of the support to be provided by the county to the agency, which must include:
  - a. Office space and clerical support sufficient to perform the required emergency management functions;
  - b. Transportation or reimbursement for private transportation used for official duties;
  - c. Portable radio, pager, cellular telephone, or other communications arrangement for 24-hour-a-day notification of the disaster agency;
  - d. Designation of one or more persons to act as an alternate disaster agency head when the emergency coordinator is not available. All other county



- agencies and county employees must cooperate with the disaster agency in all matters pertaining to emergency preparedness; and
- e. The requirement that all other county agencies and employees cooperate with the disaster agency.

The county must furnish to the Kansas Division of Emergency Management a written job description for the coordinator's position. The written job description must:

- (1) Outline the required duties and responsibilities of the position;
- (2) Establish the requirements for selection to and continued employment in the position;
- (3) Specify the number of hours per week to be spent on emergency preparedness duties; and
- (4) Set forth the salary range for the position.<sup>53</sup>

The county must report any changes to the disaster agency resolution or any changes to the disaster agency head to the Emergency Management Division within 10 days of the change.<sup>54</sup> The local disaster agency must also provide quarterly activity reports to the Division on behalf of the county.<sup>55</sup>

Kansas directs the Division of Emergency Management to take an integral part in developing and revising local disaster emergency plans.<sup>56</sup> The division employs professional and technical personnel to provide expert assistance to counties and the local disaster agencies on a regular basis. The personnel must conduct field examinations of local disaster agencies, and the division may require revisions to the local disaster plan based on findings from the examination.

[Back to top](#)

### **16.8.3 Declaring an Emergency**

The governor may proclaim a state of emergency anywhere in the state through an executive order.<sup>57</sup> Examples include everything from natural disaster or rioting to disease or other public emergency. The state of emergency cannot continue longer than 15 days unless ratified by concurrent resolution of the legislature. Periods can be extended up to 30 days, but only if the governor appeals to the legislative coordinating council and five of those members provide an affirmative vote. As of March 2021, Kansas adopted Senate Bill 40 which made changes to the Emergency Management Act. Included in those changes was a larger role for the Legislative Coordinating Council. This council consists of eight members which includes the president, vice president, majority and minority leaders from the senate, and the speaker, speaker pro tempore, the majority leader and minority leaders of the house of representatives. The chairperson of the legislative coordinating council will call a meeting within 24 hours to review the issuance of an executive order.<sup>58</sup> Such executive orders can be revoked at any time by concurrent resolution of the legislature or, if the legislature is not in session or adjourned for three or more days, with an affirmative vote of five members from the legislative coordinating council.

The chairman of a Board may declare a state of local disaster emergency.<sup>59</sup> The state of disaster cannot continue beyond seven days without approval by the full Board. The county's declaration of a local disaster emergency activates the local disaster emergency plans applicable to the county. If participating in an inter-jurisdictional disaster agency, a county cannot declare a local disaster emergency unless expressly authorized by the inter-jurisdictional agreement.

[Back to top](#)

#### **16.8.4 Parties Aggrieved by Governor's Executive Order**

Any party aggrieved by an executive order that has the effect of substantially burdening or inhibiting the gathering or movement of individuals, or the operation of any religious, civic, business or commercial activity, whether for-profit or not-for-profit, may file a civil action.<sup>60</sup> The civil action may be filed in the district court of the county where the party resides or in the district court of Shawnee County, Kansas, within 30 days after the issuance of the executive order. Unless a time extension is ordered by the chief justice of the Kansas supreme court, courts shall conduct a hearing within 72 hours after receipt of a petition. The court shall grant the request for relief unless the court finds the executive order was narrowly tailored to respond to the state of disaster emergency and it used the least restrictive means available to achieve such purpose. The court will issue an order within seven days after the hearing is conducted. If the court fails to issue an order within that time frame, the requested relief will be granted.

[Back to top](#)

#### **16.8.5 Secretary of Health's Role and Limitations**

The secretary of health and environment may take action to prevent the introduction or spread of infectious or contagious disease into the state by adopting necessary rules and regulations.<sup>61</sup> However, the legislature may revoke the secretary's order at any time by concurrent resolution, or if not session or adjourned for three or more days, the order may be revoked by the legislative coordinating council with a five-member affirmative vote.

[Back to top](#)

#### **16.8.6 County Orders Differing from Executive Orders**

The board of county commissioners of any county may issue an order relating to public health that includes provisions that are less stringent than the provisions of an executive order issued by the governor that is effective statewide.<sup>62</sup> The order must specify that the board has consulted with the local health officer or other local health officials regarding the governor's executive order, and based on that consultation, implementation of the full scope of the provisions in the governor's executive order are not necessary to protect the public health and safety of the county. The order must also include all other relevant findings to support the board's decision. If the board of county commissioners of a county issues an order pursuant to K.S.A. § 48-925(h), that order shall operate in the county in lieu of the governor's executive order.

[Back to top](#)

### **16.8.7 Parties Aggrieved by County Orders**

Any party aggrieved by an action taken by a local unit of government that has the effect of substantially burdening or inhibiting the gathering or movement of individuals, or the operation of any religious, civic, business or commercial activity, whether for-profit or not-for-profit, may file a civil action.<sup>63</sup> The civil action must be filed in the district court of the county where such action was taken within 30 days after such action is taken. Unless a time extension is ordered by the chief justice of the Kansas supreme court, courts shall conduct a hearing within 72 hours after receipt of a petition. The court shall grant the request for relief unless the court finds such action was narrowly tailored to respond to the state of local disaster emergency and it used the least restrictive means available to achieve such purpose. The court will issue an order within seven days after the hearing is conducted. If the court fails to issue an order within that time frame, the requested relief will be granted. Relief granted in one county for a particular contested action will not apply beyond the county in which the action was taken.

[Back to top](#)

### **16.8.8 Local Health Officers and Quarantine**

The Board of County Commissioners acts as a local board of health for the county.<sup>64</sup> Each county board shall appoint a person licensed to practice medicine and surgery, preference being given to persons who have training in public health, who shall serve as the local health officer and who shall act in an advisory capacity to the county board of health. Each county must appoint a local health officer or health administrator if the county has a population of less than 100,000.

The local health officer is charged with investigating and requiring any necessary treatment for those with potential exposure to infection or contagious diseases that are potentially life threatening.<sup>65</sup> The officer may order quarantine to be carried out by local law enforcement.<sup>66</sup> When ordering a quarantine, the local health officer must identify in the order the identity of those quarantined, the premises subject to quarantine, the date and time of commencement, the suspected disease if known, justification for the quarantine, and availability of a hearing (which those quarantined can also request).<sup>67</sup> A court may also authorize quarantine through written notice which includes the identity of those quarantined and the factual finding warranting said quarantine.<sup>68</sup> A court ordered quarantine shall not exceed 30 days.<sup>69</sup>

Any order issued by the local health officer may be reviewed, amended, or revoked by the board of county commissioners of the county affected by such order at a meeting of the board. However, if a local health officer determines it is necessary to issue an order mandating the wearing of face masks, limiting the size of gatherings of individuals, curtailing the operation of business, controlling the movement of the population of the county or limiting religious gatherings, the local health officer shall propose such an order to the county commissioners for review. At the next regularly scheduled meeting of the board or at a special meeting of the board, the board shall review such proposed order and may take any action related to the proposed order the board determines is necessary. The order will become effective if approved

by the board or, if the board is unable to meet, if approved by the chairperson of the board or the vice chairperson of the board in the chairperson's absence or disability. Any order reviewed or amended by the board shall include an expiration date set by the board and may be amended or revoked at an earlier date by a majority vote of the board.

[Back to top](#)

#### **16.8.9 Parties Aggrieved by Local Health Official Orders**

Any party aggrieved by an order that mandates the wearing of face masks, limits the size of gatherings of individuals, curtails the operation of business, controls the movement of the population of the county or limits religious gatherings, may file a civil action.<sup>70</sup> The civil action must be filed in the district court of the county where such action was taken within 30 days after such order is issued. Unless a time extension is ordered by the chief justice of the Kansas supreme court, courts shall conduct a hearing within 72 hours after receipt of a petition. The court shall grant the request for relief unless the court finds such order was narrowly tailored to the purpose stated in the order and it used the least restrictive means available to achieve such purpose. The court will issue an order within seven days after the hearing is conducted. If the court fails to issue an order within that time frame, the requested relief will be granted. Relief granted in one county for a particular contested action will not apply beyond the county in which the action was taken.

[Back to top](#)

#### **16.8.10 Local School District Determine Operations**

During any disaster emergency, the state board of education, the governor, the department of health and environment, a local health officer, a city health officer or any state or local unit of government may provide guidance, consultation or other assistance to the board of education of a school district but cannot take any action related to the disaster emergency that affects the operation or attendance of such school district. Only the board of education responsible for the maintenance, development and operation of a school district can take any action, issue any order or adopt any policy in response to a disaster emergency that affects the operation or attendance of such school district.

[Back to top](#)

#### **16.8.11 Governing Body of Community and Technical Colleges Determine Operations**

During any disaster emergency, the state board of regents, the governor, the department of health and environment, a local health officer, a city health officer, the Kansas association of community college trustees, the Kansas technical college association or any other state or local unit of government may provide guidance, consultation or other assistance to the governing body of a community college or technical college, but cannot take any action related to the

disaster emergency that affects the operation of any such college. Only the governing body of a community or technical college can take any action, issue any order or adopt any policy in response to a disaster emergency that affects the operation of the community or technical college governed by such governing body.

[Back to top](#)

#### **16.8.12 Kansas Emergency Planning and Community Right-To-Know Act**

The Kansas Emergency Planning and Community Right-To-Know Act and a federal law with the same name (The *Federal* Emergency Planning and Community Right-To-Know Act) created a state emergency response commission, whose purpose is to provide assistance and coordination for toxic or hazardous chemical emergencies. The federal EPCRA responds to concerns regarding the environmental and safety hazards posed by the storage and handling of toxic chemicals. The commission includes one individual who represents counties<sup>71</sup> to carry out the requirements of the federal law.

The Community Right-to-Know provisions in the law help increase the public's knowledge and access to information on chemicals at individual facilities, as well as their uses and releases into the environment. States and local communities can use the information to improve chemical safety and protect public health and the environment.

The EPCRA requires local governments to prepare chemical emergency response plans and to review plans at least annually. Also, the state must oversee and coordinate local planning efforts. The Kansas Adjutant General is currently responsible for emergency planning activities, but the administrative regulations on the law are found under KDHE at K.A.R. 28-65-1 *et seq.*<sup>72</sup>

These laws are particularly important to Kansas counties because the State Emergency Response Commission has designated counties with the primary responsibility to work with facilities and businesses to develop response plans to deal with hazardous materials emergencies.<sup>73</sup> In all counties, the county commission appoints a local emergency planning committee that the State Emergency Response Commission approves. In the absence of an appointed local emergency planning committee, the chairman of the county commission is responsible for performing the acts required of the committee.<sup>74</sup>

More information is available from the Kansas Department of Health and Environment, Right-To-Know Program at <https://www.kdhe.ks.gov/1009/Radiation-Right-To-Know> or via phone (785) 296-1560. For information relating to emergency planning, contact Kansas Division of Emergency Management, 2800 SW Topeka Blvd., Topeka, Kansas, 66611-1287, phone: (785) 785-646-2000.

[Back to top](#)

### **16.8.13 Other County Emergency Provisions**

The Board may declare a drought emergency via resolution. Counties can spend general-fund monies to purchase pumping equipment and other related equipment. The county can also rent drought-related equipment to landowners for relief purposes. Counties also have the authority to participate in federal flood control projects.<sup>75</sup>

[Back to top](#)

## **ARTICLE 9: CANVASSING ELECTIONS**

### **16.9.1 Introduction**

Elections are the responsibility of the county election officer. In most counties the county clerk is the county election officer. K.S.A. § 19-3419 requires the creation of an office of commissioner of elections, which must be administered by an election commissioner appointed by the Secretary of State. K.S.A. § 19-3422 specifically transfers all elections powers from the county clerk to the election commissioner. Note that K.S.A. § 19-3419, which was updated in 1982, creates the elections officer once the county population reaches 130,000. K.S.A. § 19-3422, updated in 1968, transfers powers to the election commissioner in counties that have a population exceeding 100,000. No one has litigated the conflict in population, but the KAC interprets the statutes that an election commissioner is not necessary unless a county reaches a population of 130,000 people.

[Back to top](#)

### **16.9.2 Board of Canvassers**

The county commissioners are required to serve as a board of canvassers for elections.<sup>76</sup> Canvassing is the “compilation of election returns and validation of the outcome that forms the basis of the official results by political subdivision”—an important responsibility for counties.<sup>77</sup> The commissioners must meet between 8:00 a.m. and 10:00 a.m. on the Monday or the second Thursday following a Tuesday election. If the election does not fall on a Tuesday, the commissioners must meet at a specified day and hour that is not later than thirteen business days after the election.<sup>78</sup> The meeting must be in the county election officer’s office unless a different place is agreed upon by the board of canvassers and the county election officer.<sup>79</sup> If a different place is agreed upon, the county election officer must give notice to the public of the different location.<sup>80</sup> In the event that a member of the commissioners is absent, the remaining members of the Board of County Commissioners must select an elector to serve on the board of canvassers in his or her place.<sup>81</sup> If more than one Board member is absent, the remaining members of the Board and the county election officer must jointly select two persons to serve in place of the absent member(s).

[Back to top](#)

### **16.9.3 Duties**

The board of county canvassers must make the final canvass of election returns of every county, township, city, and school election whether the election is an election of officers or a

question that has been submitted for election. The board of county canvassers must make the intermediate canvass of election returns on:

- (1) Question-submitted elections on constitutional amendments;
- (2) Elections of national and state officers; and
- (3) Any other elections for which it is provided by law.<sup>82</sup>

At the time of commencement of the canvass, the county election officer must present to the board the preliminary abstract of election returns together with the ballots and records returned by the election boards. The county board of canvassers inspects and checks the records presented by the county election officer and hears any questions that the county election officer deems appropriate for the board to determine.<sup>83</sup> But the county board of canvassers or the election officer cannot open or unseal any sacks or envelopes of ballots except in limited circumstances provided in law.

The county board of canvassers must also perform all other acts it determines to be appropriate for an accurate and just canvass of the election. It must then finalize the preliminary abstract of election returns by making any needed changes and certifying the changes for authenticity and accuracy. The county election officer must attest to the certification.

[Back to top](#)

#### **16.9.4 Recount**

A recount may be conducted when it appears to a majority of the members of the board that there are errors appearing on the face of the poll books of any election board, and these errors might make a difference in the result of the election.<sup>84</sup> A candidate may request a recount. Any registered elector who casts a ballot in a question-submitted election may request a recount.<sup>85</sup> The county board of canvassers appoints a special election board to conduct the recount. Neither the board of canvassers nor the election commissioner may serve on the special elections board.<sup>86</sup>

[Back to top](#)

#### **16.9.5 Tie Vote**

If there is a tie vote in any election after the county board makes the final canvass, the board must determine by lot which person is nominated or elected. The board must give reasonable notice of the time the lot will be decided to the people involved. If such persons fail to appear in accordance with the notice, the board of canvassers will make the determination in their absence.<sup>87</sup>

[Back to top](#)

#### **16.9.6 Certification of Abstract**

In every final canvass of election returns, the board of canvassers must make the final determination of the results and enter the results in the final abstract in the election returns.

The abstract must be certified by the county board and deposited in the office of the county election officer as a permanent record.<sup>88</sup>

[Back to top](#)

## **ARTICLE 10: District Court**

### **16.10.1 General**

Except for expenses required by law to be paid by the state, the Board of each county must adequately fund the operation of the district court in the county and shall be responsible for all expenses incurred for the operation of the district court in the county.<sup>89</sup>

[Back to top](#)

### **16.10.2 Preparation and Approval of Budget**

The Kansas Supreme Court appoints a chief judge for each judicial district. The chief judge, or a fiscal officer under the supervision of the chief judge, prepares a district court county operating budget using forms provided by the judicial administrator.<sup>90</sup> A separate budget is prepared for each county within the district. The budget is then submitted to the Board for approval.<sup>91</sup>

[Back to top](#)

### **16.10.3 Control of Expenditures**

The budget is to include all expenditures payable by the county for operations of the district court. Once approved by the Board and the budget is established, expenditures are under the control and supervision of the chief judge.<sup>92</sup> Therefore, the Board must approve payment of claims submitted by the chief judge provided the claim is within the limits of the district court budget. Consequently, the Board has no authority to regulate, control, or supervise the financial affairs or clerical or administrative functions of the district court.<sup>93</sup> This includes the ability to establish the hours and days of operation for a district court<sup>94</sup> or require a district court to follow county purchasing policies.<sup>95</sup>

[Back to top](#)

### **16.10.4 Audit**

The financial affairs of the district court in each county are subject to audit as part of the annual county audit.<sup>96</sup>

[Back to top](#)



## ARTICLE 11: OTHER FUNCTIONS

### 16.11.1 Ambulance Services

The Board has the authority to provide ambulance service for the county.<sup>97</sup> The county can provide the service itself or may contract with another county, city, or private entity to provide the service. The county can, by resolution, authorize an annual tax levy to help pay for the service. The county cannot provide ambulance service to areas in the county that already have ambulance service.<sup>98</sup>

The Board can create an ambulance services taxing district under K.S.A. § 65-6118. By resolution the county creates the district and defines the boundaries. The governing body of the district is the Board, which can levy an annual tax upon all taxable property in the district.

A county providing ambulance services can enter into contracts for the construction, operation, management, maintenance, and supervision of ambulance services with any person or governmental entity.<sup>99</sup> The county also has the authority to charge a fee for services that it renders. If the county provides ambulance services, K.S.A. § 65-6117 requires the Board to establish a minimum set of standards for the operation of the ambulance service, facilities, and equipment, and for the qualifications and training of personnel.

[Back to top](#)

### 16.11.2 Airports

Counties have the authority to acquire and operate airports, including capacity for joint operations with other governmental units.<sup>100</sup> (See Chapter 17, Intergovernmental Cooperation.) Approximately one quarter of the counties in Kansas provide airport service.

The Kansas Department of Transportation has [information on aviation](#) and information specifically [geared toward counties](#). This includes details on the Kansas Airport Improvement Program.

[Back to top](#)

### 16.11.3 Hospitals

Of the 105 counties in Kansas, 20 contain more than one community hospital, 76 contain only one community hospital, and nine are without any community hospitals. The following counties do not have a hospital: Chase, Doniphan, Elk, Gray, Linn, Osage, Wabaunsee, Wallace and Woodson. Altogether, Kansas has 125 community hospitals.<sup>101</sup>

About 36 counties *own* hospitals.<sup>102</sup> K.S.A. § 19-4603 allows a county to construct or otherwise acquire a hospital. The Board may create a board of trustees to oversee the management and control of the county hospital.<sup>103</sup> While the hospital board is subject to resolutions of the county commission,<sup>104</sup> the control is no greater than that possessed over any other county

office. Decisions concerning specific matters in the hospital, as well as procedural questions such as by-laws, are vested in the board of trustees by statute, and cannot be preempted by the county commission.<sup>105</sup>

The hospital board adopts bylaws and regulations for management of the hospital. The hospital board has exclusive control of the expenditure of hospital monies, except those monies acquired through revenue bonds. The hospital board has power to establish certain employee benefits including pensions, deferred compensation plans, and any other employee benefit plans for hospital employees, such as insurance.<sup>106</sup>

County hospital property is required to be vested in the county.<sup>107</sup> Proceeds from the sale of a county hospital may be retained by the county or may be given to the hospital board for operational expenses. Property sold by the county should be sold according to the statutes governing the sale of public property. Insurance premiums can be paid by the county, the hospital board, or a third-party leaseholder, but the insured party should be the county.

K.S.A. § 19-4604 allows a city or district hospital to convey, transfer, or donate hospital property to a county for purposes of creating a county hospital. The issue must be submitted to the qualified electors before the transaction can occur. When the transaction is complete, the governing body of the hospital district or governing body of a city will convey the hospital property to the county. Monies from the transaction must be placed in the operation or maintenance fund of the county hospital.

[Back to top](#)

#### **16.11.4 Mental Health**

K.S.A. § 19-4001 allows one or more counties to establish mental health centers or facilities for the mentally disabled, subject to the approval of the Kansas Department for Aging and Disability Services. The range of services that can be provided by such facilities include:<sup>108</sup>

- (1) Outpatient and in-patient diagnostic and treatment services;
- (2) Consultative services to schools and other public and private agencies;
- (3) Educational programs; and
- (4) Preschool/day care for the mentally disabled.

The Board of County Commissioners appoints a governing board of at least seven members to perform these duties.<sup>109</sup> The Board can establish a single board handling mental health and mental disabilities or create separate boards for each service. Johnson County, Sedgwick County, and Wyandotte County have a special statute relating to their community mental health and mental disabilities governing board.<sup>110</sup>

The Board can contract for these services with a nonprofit corporation.<sup>111</sup> The governing board created by the Board of County Commissioners can also contract for mental health and mental disability services.

Counties may levy an annual tax upon tangible property in the county for mental health and mental disability services and to pay the principal and interest on bonds.<sup>112</sup>

The governing board for community mental health and mental disabilities services can establish a schedule of fees for services; however, no person can be denied the services offered by a mental health center or mental disability center because of inability to pay.<sup>113</sup> This rule applies even if a separate nonprofit entity contracts to provide these services.<sup>114</sup>

All Kansas counties levy taxes for mental health services, and there are 27 counties with mental health center facilities.

[Back to top](#)

#### **16.11.5 Homes for the Aged**

The Board is statutorily empowered to establish homes for the aged which include personal care homes, boarding homes, and—most commonly—nursing homes.<sup>115</sup> The Board establishes a home for the aged by authorizing a resolution, resulting in a question which must be submitted to the voters. The vote must take place at the next general election or a special election if no general election will take place in the next six months.<sup>116</sup> If approved, the Board may support the home via tax levy or bond.<sup>117</sup>

The voting procedure for establishing homes for the aged requires three consecutive weeks of notice published in a newspaper of general circulation in the county. The notice must include the date of voting, purpose of voting, and amount of funds proposed.<sup>118</sup>

#### **16.11.6 Public Health**

Nursing services and enforcement of sanitary regulations are two of the many public health functions counties may provide. Any two or more counties (or cities and counties) may establish a joint board of health.<sup>119</sup> Any county having a population less than 15,000 may contract with a hospital to provide local health services.

The Board may adopt a sanitation code to control those environmental conditions that affect the health of the public. KDHE must review and approve the code, and the code is subject to a public hearing in the county. The county attorney is responsible for enforcing the code, and each violation is a misdemeanor.

[Back to top](#)

#### **16.11.7 Libraries**

Counties may also provide library services.<sup>120</sup> A county may pass a resolution establishing a library and must establish one after a petition and successful election calling for the creation of a library. The county can authorize an annual tax<sup>121</sup> or issues bonds for the library.<sup>122</sup>

K.S.A. § 12-1222 requires the municipality creating the library to appoint a library board. The board has the power to adopt regulations for the administration of the library, to acquire books and other materials for the library, and to employ a librarian and other employees at the library. Other duties of the library board are given in K.S.A. § 12-1225.

Some libraries are on a district basis. Generally, the service is provided by contract with municipal library systems. Regional systems of cooperative libraries and regional library programs can also be created pursuant to K.S.A. § 12-1231.

[Back to top](#)

#### **16.11.8 Weed Control**

The Board is required to control the spread of and to eradicate all noxious weeds.<sup>123</sup> A statutory procedure requires private property owners to control noxious weeds. In cases of noncompliance after receiving prior notice, the county may cause the weeds to be removed with all costs charged to the landowners.<sup>124</sup> All unpaid charges become a lien on the property.

[Back to top](#)

#### **16.11.9 Fence Viewing**

The Board serves as fence viewers or may appoint designees as fence viewers.<sup>125</sup> If the Board elects to have designees as fence viewers, their recommendation is forwarded to the Board for their approval. The approval requires a majority of the county commissioners. Each fence viewer is entitled to receive \$7.50 as full compensation for each fence viewed.<sup>126</sup>

Owners of adjoining lands are required to build and maintain partition fences. Kansas is a fence-in jurisdiction, meaning that livestock owners must fence in their animals. Kansas law requires both adjoining landowners to equally share the cost of the fence unless the adjoining lands have a common use.<sup>127</sup> If the parties cannot agree to constructing the fence, or do not maintain it, fence viewers are called upon to resolve the dispute. They view the fence and assign each party an equal share of the fence to build or repair. The decision of the fence viewers should be recorded at the register of deeds.

Fence viewers are authorized to inspect the sufficiency of a fence, resolve controversies over the maintenance of a fence, and appraise and assess damages caused by the failure to maintain a fence. However, fence viewers do not have the power to order that a fence be moved.<sup>128</sup>

[Back to top](#)

#### **16.11.10 Dissolving, Consolidation, or Reorganizing a Township**

Townships may be dissolved, consolidated, or reorganized by the Board of County Commissioners or the township residents.<sup>129</sup>

## **Dissolution**

K.S.A. § 80-1118 outlines the process to dissolve a township:

“The board of county commissioners may disorganize any township if any of the following apply:

- 1) The number of residents in the township shall become less than 200;
- 2) A vacancy exists in the office of township trustee, clerk or treasurer for two consecutive years; or
- 3) The township fails to file an annual budget for two consecutive years.”

Upon dissolution, the territory of the former township should merge with one or more adjoining townships.<sup>130</sup> To initiate these proceedings, the Board must “adopt a resolution stating the county is considering the disorganization of such township.”<sup>131</sup> The resolution must be published in a newspaper of general circulation before the hearing and must state the date, hour, and place of the public hearing. “Unless the board determines adequate facilities are not available, the public hearing shall be held at a site located within such township. The site and time of the hearing shall be held at a location and time determined to be the most convenient for the greatest number of interested persons.”<sup>132</sup> After holding the public hearing, the Board can disorganize the township and attach its territory to one or more adjacent townships by passing a resolution. The county must publish the resolution once each week for two consecutive weeks in a newspaper of general circulation within the township, and it “shall take effect 60 days after the final publication unless a petition signed by electors of such township equal in number to at least 10% of the electors who voted at the last general election is presented to the county clerk calling for an election on the issue.”<sup>133</sup> If such a petition is filed, the dissolution shall only be effective if a majority of the votes cast are in favor of dissolution.

Another statutory construct exists for the dissolution of townships in counties containing a population of less than 3,000 inhabitants and in which there is no township indebtedness.<sup>134</sup>

## **Consolidation**

Two or more townships can be consolidated if:

- (1) Each township board agrees to the consolidation; and
- (2) The electors of each township vote in favor of such an agreement.<sup>135</sup>

## **Reorganization**

Counties with a county unit road system may disorganize a township and attach the territory to another township subject to a protest petition signed by a majority of the township electors opposing the disorganization.<sup>136</sup>

The petition requirement of K.S.A. § 19-217 applies only to the organization of **new** townships.<sup>137</sup> Case law holds that even absent a statute, the Board has the power to alter the lines of a township at any time and at its own initiative.<sup>138</sup>

Counties can disorganize a township and attach the territory to another township, except when the majority of the electors in the township sign a petition opposing the plan. Counties can alter or amend the boundaries of a township, and the townships do not have the right to have the decision changed by signing a protest petition.<sup>139</sup>

[Back to top](#)

#### **16.11.11 Other Services**

Kansas also authorizes its counties to perform a number of other services including:

- (1) Civil Defense;
- (2) Animal Control;
- (3) Museums;
- (4) Historical Sites;
- (5) Law Libraries;
- (6) Cemeteries; and
- (7) Building related Code Inspection

Due to limitations of size for this handbook, and since many counties are not active in some service areas, discussion of all possible county services is omitted. The Board should, however, be alert as to the need for these and other needed county services.

[Back to top](#)

## CHAPTER 16 ENDNOTES

---

- <sup>1</sup> K.S.A. § 68-516a.
- <sup>2</sup> K.S.A. § 68-516b.
- <sup>3</sup> K.S.A. § 68-591 *et seq.*
- <sup>4</sup> K.S.A. § 79-5040.
- <sup>5</sup> K.S.A. § 68-572.
- <sup>6</sup> K.S.A. § 68-124.
- <sup>7</sup> K.S.A. § 68-527.
- <sup>8</sup> K.S.A. § 8-2005 *et seq.*
- <sup>9</sup> K.S.A. § 68-516.
- <sup>10</sup> K.S.A. § 68-506.
- <sup>11</sup> *Robertson v. Labette Cty. Comm'ns*, 124 Kan. 705, 709, 231 P. 831 (1927).
- <sup>12</sup> A.G. 91-140.
- <sup>13</sup> K.S.A. § 68-102.
- <sup>14</sup> K.S.A. § 68-106.
- <sup>15</sup> K.S.A. § 68-141a.
- <sup>16</sup> *Id.*
- <sup>17</sup> *Id.*
- <sup>18</sup> K.S.A. § 8-2001 *et seq.*
- <sup>19</sup> *Id.*
- <sup>20</sup> K.S.A. § 19-3601 *et seq.*; A.G. 2000-40.
- <sup>21</sup> K.S.A. § 19-3605.
- <sup>22</sup> K.S.A. § 19-3612a; A.G. 2000-27.
- <sup>23</sup> K.S.A. § 19-3608.
- <sup>24</sup> K.S.A. § 12-110a.
- <sup>25</sup> K.S.A. § 19-3612c.
- <sup>26</sup> K.S.A. § 40-1701 *et seq.*; A.G. 2000-40.
- <sup>27</sup> K.S.A. § 19-2801 *et seq.*
- <sup>28</sup> K.S.A. § 19-2801.
- <sup>29</sup> K.S.A. § 19-2802.
- <sup>30</sup> K.S.A. § 19-2803.
- <sup>31</sup> K.S.A. § 19-2802.
- <sup>32</sup> K.S.A. § 19-2803a.
- <sup>33</sup> K.S.A. § 19-801a *et seq.*
- <sup>34</sup> *Board of Lincoln Cty. Comm'ns v. Nielander*, 275 Kan. 257, 62 P.3d 247 (2001).; K.S.A. § 19-803.
- <sup>35</sup> K.S.A. § 19-811.
- <sup>36</sup> K.S.A. § 19-805(d).
- <sup>37</sup> K.S.A. § 19-801b; K.S.A. § 74-5601 *et seq.*
- <sup>38</sup> K.S.A. § 74-5607a(b).
- <sup>39</sup> K.S.A. § 19-801b(c).
- <sup>40</sup> K.S.A. § 19-801b(d).
- <sup>41</sup> K.S.A. § 41-2701 *et seq.*
- <sup>42</sup> K.S.A. § 41-2702 *et seq.*, for the notice procedure to townships.
- <sup>43</sup> K.S.A. § 19-4401 *et seq.*
- <sup>44</sup> K.S.A. § 12-2909.
- <sup>45</sup> K.S.A. § 19-807d.
- <sup>46</sup> K.S.A. § 19-4501.
- <sup>47</sup> *Id.*
- <sup>48</sup> K.S.A. § 19-4502.
- <sup>49</sup> *Id.*
- <sup>50</sup> K.S.A. § 48-929(a).

- 
- <sup>51</sup> K.S.A. § 48-904(a).
- <sup>52</sup> K.S.A. § 48-929(a).
- <sup>53</sup> K.A.R. 56-2-2.
- <sup>54</sup> *Id.*
- <sup>55</sup> *Id.*
- <sup>56</sup> K.S.A. § 48-931.
- <sup>57</sup> K.S.A. § 48-924.
- <sup>58</sup> K.S.A. § 48-925(b) *et seq.*
- <sup>59</sup> K.S.A. § 48-932.
- <sup>60</sup> K.S.A. § 48-925(g) *et seq.*
- <sup>61</sup> K.S.A. § 65-101(a)(5) *et seq.*
- <sup>62</sup> K.S.A. § 48-925(h)
- <sup>63</sup> K.S.A. § 48-925(g) *et seq.*
- <sup>64</sup> K.S.A. § 65-201.
- <sup>65</sup> K.S.A. § 65-129b(a).
- <sup>66</sup> K.S.A. §§ 65-129b(a)(1)(a), 65-129b(a)(2), 65-101(a)(5).
- <sup>67</sup> K.S.A. § 65-129c(b)-(d).
- <sup>68</sup> K.S.A. § 65-129c(d)(5).
- <sup>69</sup> K.S.A. § 65-129c(d)(7).
- <sup>70</sup> K.S.A. § 48-925(g) *et seq.*
- <sup>71</sup> K.S.A. § 65-5721.
- <sup>72</sup> Before the Kansas Adjutant General assumed responsibility for oversight of the Kansas Emergency Planning and Community Right-To-Know Act, the Kansas Department of Health and Environment oversaw the law.
- <sup>73</sup> Kansas Division of Emergency Management.
- <sup>74</sup> *Id.*
- <sup>75</sup> K.S.A. § 19-3001 *et seq.*
- <sup>76</sup> K.S.A. § 25-3101 *et seq.*
- <sup>77</sup> U.S. ELECTION COMMISSION, QUICK START MANAGEMENT GUIDE: CANVASSING AND CERTIFYING AN ELECTION (2010), *available at* [https://www.eac.gov/sites/default/files/document\\_library/files/Quick\\_Start-Canvassing\\_and\\_Certifying\\_an\\_Election.pdf](https://www.eac.gov/sites/default/files/document_library/files/Quick_Start-Canvassing_and_Certifying_an_Election.pdf) .
- <sup>78</sup> K.S.A. § 25-3104.
- <sup>79</sup> K.S.A. § 25-3105.
- <sup>80</sup> *Id.*
- <sup>81</sup> K.S.A. § 25-3102.
- <sup>82</sup> K.S.A. § 25-3103.
- <sup>83</sup> K.S.A. § 25-3107(a).
- <sup>84</sup> K.S.A. § 25-3107(b).
- <sup>85</sup> *Id.*
- <sup>86</sup> *Id.*
- <sup>87</sup> K.S.A. § 25-3108.
- <sup>88</sup> K.S.A. § 25-3109.
- <sup>89</sup> K.S.A. § 20-348.
- <sup>90</sup> Sup.Ct. Rules, Rule 107.
- <sup>91</sup> K.S.A. § 20-349.
- <sup>92</sup> *Id.*
- <sup>93</sup> A.G. 96-04, 77-180, 83-76.
- <sup>94</sup> A.G. 86-21.
- <sup>95</sup> A.G. 96-04.
- <sup>96</sup> K.S.A. § 20-349.
- <sup>97</sup> K.S.A. § 65-6113.
- <sup>98</sup> *Id.*
- <sup>99</sup> K.S.A. § 65-6116.
- <sup>100</sup> K.S.A. §§ 19-212 *Twelfth* and 3-301 *et seq.*



---

<sup>101</sup> Kansas Hospital Association, Community Hospital Directory. <https://www.khanet.org/KansasHospitals/HospitalListings/> (Last accessed March 28, 2023).

<sup>102</sup> *Id.*

<sup>103</sup> K.S.A. § 19-4605.

<sup>104</sup> K.S.A. § 19-4610(a).

<sup>105</sup> K.S.A. §§ 19-4605, 19-4607, 19-4610, 19-4611; A.G. 2000-28.

<sup>106</sup> K.S.A. § 19-4610(b).

<sup>107</sup> K.S.A. § 19-4624; A.G. 2000-30.

<sup>108</sup> *See*, K.S.A. § 19-4001 for a complete listing of services.

<sup>109</sup> K.S.A. § 19-4002.

<sup>110</sup> K.S.A. §§ 19-4002a, 19-4002b.

<sup>111</sup> K.S.A. § 19-4007.

<sup>112</sup> K.S.A. § 19-4004.

<sup>113</sup> K.S.A. § 19-4005.

<sup>114</sup> K.S.A. § 19-4007.

<sup>115</sup> K.S.A. § 19-2106.

<sup>116</sup> K.S.A. § 19-2106(b).

<sup>117</sup> K.S.A. § 19-2106(a).

<sup>118</sup> K.S.A. § 19-2107.

<sup>119</sup> K.S.A. § 65-205.

<sup>120</sup> K.S.A. § 12-1219.

<sup>121</sup> K.S.A. § 12-1220.

<sup>122</sup> K.S.A. § 12-1221.

<sup>123</sup> K.S.A. § 2-1314.

<sup>124</sup> K.S.A. § 2-1320.

<sup>125</sup> K.S.A. § 29-201.

<sup>126</sup> K.S.A. § 29-203.

<sup>127</sup> K.S.A. § 29-309.

<sup>128</sup> A.G. 2002-42.

<sup>129</sup> K.S.A. §§ 19-212 *Seventh*, 19-217, and 80-1101a *et seq.*

<sup>130</sup> K.S.A. § 80-1118.

<sup>131</sup> K.S.A. § 80-1118(b).

<sup>132</sup> K.S.A. § 80-1118(b)(1).

<sup>133</sup> K.S.A. § 80-1118(c).

<sup>134</sup> K.S.A. § 80-1105 *et seq.*

<sup>135</sup> K.S.A. § 80-1109.

<sup>136</sup> *See* K.S.A. § 80-1110.

<sup>137</sup> *State v. Tindell*, 112 Kan. 256, 210 P. 619 (1922).

<sup>138</sup> *Id.* at 263.

<sup>139</sup> *Id.*

## **CHAPTER 17: INTERGOVERNMENTAL COOPERATION**

### **ARTICLE 1: INTRODUCTION**

Kansas local governments have broad legal authority to cooperate while performing public functions and services. There are three general types of Kansas statutes on intergovernmental cooperation:

- (1) The Interlocal Cooperation Act<sup>1</sup> allows two or more local units to do cooperatively or jointly that which they are commonly empowered to do;
- (2) The Interlocal Service Statutes<sup>2</sup> provide broad authority for any city or county to contract with any other city or county to perform any governmental service, activity, or undertaking, which each contracting city or county is authorized to perform by law; and
- (3) The Functional Consolidation Statute<sup>3</sup> gives counties, townships, cities, school districts, library districts, park districts, road districts, drainage or levee districts, sewer districts, water districts, and other taxing subdivisions created under state law, broad authority to consolidate operations, procedures, and functions in the interest of efficiency and effectiveness.

The general cooperative statutes are not the only authority for interlocal cooperation; there are several specific cooperation statutes that authorize governmental units to cooperate on certain functions or services. One example is the general highway and public works statutes, which promote cooperation between local and state public works and highway agencies.<sup>4</sup>

[Back to top](#)

### **ARTICLE 2: INTERLOCAL COOPERATION ACT**

#### **17.2.1 Interlocal Cooperation Act**

K.S.A. § 12-2901 *et seq.* comprises the Kansas Interlocal Cooperation Act. This law essentially permits any two or more public agencies to cooperatively perform the functions that public agencies typically perform. The agencies involved in the intergovernmental cooperation venture may include Kansas, another state, the United States, an Indian tribe, or any private agency, as well as local units of government including counties, townships, cities, school districts, and other districts. The definition is broad enough to cover any separate political or taxing subdivision of the state.

The Legislature has expanded the permissible areas of cooperation since the original enactment in 1957. The present statute permits cooperation in such areas as:

- 1) Economic development;
- 2) Public improvements;
- 3) Public utilities;

- 4) Police protection;
- 5) Public security and safety;
- 6) Emergency preparedness (including intelligence, anti-terrorism, and disaster recovery);
- 7) Libraries;
- 8) Data processing services;
- 9) Educational services;
- 10) Building and related inspection services;
- 11) Flood control and storm water drainage;
- 12) Weather modification;
- 13) Sewage disposal and refuse disposal;
- 14) Park and recreational programs and facilities;
- 15) Ambulance service;
- 16) Fire protection; and
- 17) The Kansas Tort Claims Act or claims for civil rights violations.

These specified areas are illustrative, and not exclusive, so agreements under the statute are not limited to the above illustrations. Interlocal agreements increase the capacity and efficiency of local or smaller governmental entities by allowing them to:

- 1) Realize economies of scale;
- 2) Solve common problems through joint action;
- 3) Deliver governmental services that might otherwise be unavailable; and
- 4) Reduce costs and create efficiencies

[Back to top](#)

### **17.2.2 Contents of the Agreement**

There are statutory specifications for an interlocal agreement.<sup>5</sup> Kansas requires that the agreement includes the purpose of the agreement, its duration, any separate entity, joint board, or administrator created by the agreement, the manner of financing, the permissible methods of terminating the agreement and disposing of the property, and any other necessary and proper matters.

[Back to top](#)

### **17.2.3 Approval by the Attorney General**

The Attorney General must review any written agreements under this statute to determine if they are in proper form. An agreement that merely creates a council or organization of local governments to promote intergovernmental cooperation does not require AG review, nor do agreements entered into regarding joint action that are subject to the oversight of a Kansas regulatory agency.<sup>6</sup>

[Back to top](#)

#### **17.2.4 Filing**

An interlocal agreement must be filed with the register of deeds of each county where the public agencies are located and also with the Kansas Secretary of State.<sup>7</sup> Failure to file the agreement as required by law does not affect the validity of the agreement.<sup>8</sup>

### **ARTICLE 3: INTERLOCAL SERVICE STATUTES**

Unlike an interlocal joint cooperation agreement where both public agencies enter into an agreement for joint responsibilities, an interlocal service contract usually allows for one public agency to perform the service for another in return for payment.

For example, K.S.A. § 12-2908 provides broad authority for any city, county, or township to contract with any other city, county, or township to perform any governmental service, activity, or undertaking, which each contracting city, county, or township is authorized to perform by law. The law does not require attorney general approval, but the governing bodies must authorize the contract and include the purpose, powers, rights, objectives, and responsibilities of the contracting parties.

Because of its broad authorization and simplicity, this act is being increasingly used when only cities or counties are involved in a service arrangement. An interlocal services contract under this statute is not considered an interlocal agreement under K.S.A. § 12-2901. When a joint public agency is needed, or where the joint or cooperative performance of a service is required, the interlocal cooperation act is used.

K.S.A. § 12-2909 says the Board of any county and the governing body of any city located within the county may enter into a contract providing for the enforcement of the city's ordinances by the sheriff. The county sheriff must approve this type of contract. The county must spend all monies received from the city solely for law enforcement purposes. The sheriff and any officers of the sheriff's department enforcing a city's ordinances under the contract have all the powers of any other police officer of the city by virtue of the contract.

A contract under this statute also is not an interlocal agreement under K.S.A. § 12-2901 *et seq.*

[Back to top](#)

### **ARTICLE 4: FUNCTIONAL CONSOLIDATION STATUTE**

A third statute entitled "Governmental Organization" gives counties, townships, cities, school districts, library districts, park districts, road districts, drainage or levee districts, sewer districts, water districts, fire districts, and other taxing subdivisions created under state law, broad authority to consolidate operations, procedures, and functions in the interest of efficiency and effectiveness.<sup>9</sup>

Consolidation under this statute occurs within a single governmental unit (internal consolidation), or through joint action of two or more governmental units (external consolidation). The governing body or governing bodies must first find by resolution that duplication exists, and that operations, procedures, or functions can be more efficiently and effectively exercised by consolidation. An office or agency is then designated to perform the consolidated function, and the time, form, and manner of implementation of the consolidation is set. Each governing body must pass an identical resolution when more than one governmental unit is involved in a consolidation.

Elimination of an elective office requires approval by a majority of the electors who are being served by that office. The election must be held in the county where the elective office is located, and the election must be held at the same time as an election for governor of the state of Kansas. The office cannot be eliminated until the election.<sup>10</sup> A transfer or elimination of statutory duties from an elected office is considered an elimination of the office and must be submitted to election as well.<sup>11</sup>

A county may use this statute to create a department of corrections and appoint a director of corrections to run the county jail.<sup>12</sup> A county can abolish the office of county treasurer using this statute.<sup>13</sup> A county can consolidate the register of deeds, treasurer, and clerk into one non-elected office so long as the requirements of the act are met.<sup>14</sup>

[Back to top](#)

## **ARTICLE 5: SPECIFIC COOPERATION STATUTES**

### **17.5.1 Introduction**

In addition to the general acts above, there are many specific statutes that authorize two or more governmental units to cooperate with certain functions or services. The following is a list of statutory authorizations, excluding interlocal cooperation practices and opportunities not specifically provided for by law. Also excluded are references to those state laws that *require* local units to act together and prescribe the procedure to be followed. With limited exceptions, this list does not indicate the statutory authority for local units to cooperate with the state, other states, or the federal government.

The inventory includes a brief description of matters subject to cooperation, in alphabetical form, together with a citation to the applicable statute of authority. Check the latest K.S.A. Supplement and session laws to ensure the statutory authority is current.

[Back to top](#)

### **17.5.2 Specific Cooperation Statutes**

Agriculture; County Extension Agents – Counties may jointly employ an extension agent.<sup>15</sup>

Air Pollution – See “Health.”

Airports – Any city and county may jointly operate, own or lease airports.<sup>16</sup>

Airports; Federal Aid – City and counties, acting jointly, may submit project applications under the federal Airport Act.<sup>17</sup>

Ambulances – Any county may contract with any city, private entity, or county hospital for ambulance services.<sup>18</sup>

Emergency Medical Services – A county or a city may contract with another unit for emergency medical services.<sup>19</sup>

Emergency Services provided by fire districts – The governing body of fire districts can enter into agreements with cities, townships, unincorporated fire departments, or other fire districts to furnish fire protection and emergency services.<sup>20</sup>

Ambulances; Johnson County – In Johnson County, fire districts may furnish emergency service to hospitals outside the district.<sup>21</sup>

Ambulances; Interlocal Cooperation – Any public agency may join with any other in cooperating on ambulance service.<sup>22</sup>

Assessors; Appraisers – Any county may unite with another county or counties to employ an appraiser.<sup>23</sup>

Audits – Local units other than cities, schools, and other counties may contract with the county to have an audit done at the same time as the county audit.<sup>24</sup>

Bridges – See “Highways.”

Buildings; General City Authority – Any city may jointly provide and equip public buildings with any other city or county.<sup>25</sup>

Buildings; General County Authority – Any county may jointly provide any public building with any other county or city.<sup>26</sup>

Buildings; Joint Township Authority – Any two or more adjoining townships in the same county may construct and use a joint township hall.<sup>27</sup>

Buildings; Public Building Commission – Any city may create a public building commission to construct and operate buildings and issue bonds for county business, city business, school district offices, parking facilities for state or federal offices, and property constituting a part of the campus of any state university.<sup>28</sup>

Buildings; Public Improvements Generally – Any public agency may join with any other in cooperating on public improvements.<sup>29</sup>

Buildings; Inspection Services – Any public agency may join with any other in cooperating on buildings and related inspection services.<sup>30</sup>

Bus Transportation – See School Bus Transportation.

Data Processing; Interlocal Cooperation – Any public agency may join with any other in cooperating on data processing services.<sup>31</sup>

Disaster Emergencies – Authorizes creation of inter-jurisdictional disaster agencies upon certain findings by the governor.<sup>32</sup>

Economic Development – Any public agency may undertake programs to promote economic and area development.<sup>33</sup>

Education – See “School Districts.”

Educational Services; Interlocal Cooperation – Two or more Boards of education may enter into agreements for interlocal educational services.<sup>34</sup>

Emergency Medical Services – See “Ambulances.”

Employees – See “Intergovernmental Personnel.”

Energy; Joint Municipal Energy Agencies – Any two or more cities may create a municipal energy agency for the purpose of securing electricity or other energy and transmitting the same to the cities belonging to the agency.<sup>35</sup>

Engineering; County Engineer – Any county may unite with an adjoining county or counties to hire a county engineer. A highway district is subject to certain limitations.<sup>36</sup>

Fire Protection; Emergency – During emergencies, city and township fire departments may go anywhere in the state to assist.<sup>37</sup>

Fire Protection; County District – Any county—by Board action or by petition of the residents—may organize one or more fire districts in the county. A county may contract with cities for fire protection. Cities may be included in the district. Contracts may be made with any township or city of adjoining county or with rural fire protection districts of adjoining counties of another state. Agreements between district and any city may be made for joint construction, equipping, and maintenance of buildings for housing fire equipment.<sup>38</sup>

Fire Protection; Interlocal Agreements – Any public agency may join with any other by written agreement in cooperating for fire protection.<sup>39</sup>

Fire Protection; Misc. – In addition to general statutes above, see: Districts, K.S.A. § 80-1501 *et seq.*, K.S.A. § 80-1512, K.S.A. § 19-3613 *et seq.*, A.G. 92-161; Townships, K.S.A. § 80-1535 *et seq.*, K.S.A. § 80-1539.

Flood Control; Interlocal Agreements – Any unit of government may enter an interlocal agreement with any other governmental unit to provide for flood control.<sup>40</sup>

Flood Control; Storm Water Drainage Districts. Any city, and the county in which the city is located, may form a storm water drainage district, which can include the area inside the city and in unincorporated areas. The district may construct and maintain main and lateral drains and provide for special assessments and bonds to finance the improvements.<sup>41</sup>

Garbage and Trash Disposal – See “Refuse.”

Health; Air Pollution – Any city, county, or combination may conduct tests of air purity and establish local air quality conservation authority under state supervision.<sup>42</sup>

Health; Board of – Any two or more cities or counties may establish a joint board of health.<sup>43</sup>

Health; Control of Contagious Disease – Counties and cities of the second or third class may take joint action to control contagious diseases.<sup>44</sup>

Health; General – City-city, city-county, and county-county agreements and contracts as to health services are generally authorized.<sup>45</sup>

Health; Mental Health Centers – Counties may establish a community mental health center and/or facility for the mentally disabled.<sup>46</sup>

Health; Mental Health Clinic – A joint health board may operate a mental health clinic.<sup>47</sup>

Health; Students; Inspections – The local health officer makes sanitary inspections of school buildings, provides certain tests, and inoculations to students.<sup>48</sup>

Highways; Agreements for Arterial Highways – Counties may assume responsibility for the construction, reconstruction, maintenance, and repair of city streets designated primary arterial highways, or secondary arterial highways if they are connecting cities between county roads. Counties and cities may agree upon the cooperative financing as to the construction, reconstruction, maintenance, and repair of city streets designated as a primary arterial highway or as a secondary arterial highway if such streets are connecting links between county roads.<sup>49</sup>



Highways; Bonds for County/City Projects – Bonds issued by counties or cities for projects may be used for county roads or city streets.<sup>50</sup>

Highways; General Agreements – Any county, city, or political subdivision of the state has the authority to enter into agreements with each other and with the state for financing, constructing, maintaining, or acquiring right of way for highways, roads, and streets whether with or without the boundary or jurisdiction of the county, city, or political subdivision.<sup>51</sup>

Highways; Agreements for Construction Maintenance – A county, township, or city may enter into agreements for the construction, reconstruction, or maintenance of any roads or streets.<sup>52</sup>

Highways; General Bridge Agreement – Any two counties, cities, or townships separated by a stream may join in the construction of a bridge and agree upon the share of the cost.<sup>53</sup>

Highways; Maintenance of County Connecting Links – Any county and city with a population under 5,000 may enter into an agreement to maintain connecting links within the city.<sup>54</sup>

Highways; Rental of Machinery and Equipment – Any county and any township is authorized to rent highway machinery and equipment to each other or to a city located within the county.<sup>55</sup>

Highways; Misc. – In addition to statutes above, see: Bridges, K.S.A. § 68-1410 *et seq.*, K.S.A. § 68-1404, K.S.A. § 68-1412 *et seq.*, K.S.A. § 68-1122, line roads, K.S.A. § 68-109, K.S.A. § 68-716, K.S.A. § 68-572, and K.S.A. § 68-582.

Hospitals – Two or more adjoining subdivisions may create a hospital district.<sup>56</sup>

Housing; Financing – Cities and counties may join together to issue bonds for residential housing.<sup>57</sup>

Housing Authorities; Joint Operation – Any two or more cities, counties, or combinations may join or cooperate in the financing, planning, construction, or operation of projects under the public housing act.<sup>58</sup>

Industrial Development – See “Port Authorities.”

Insurance; Worker’s Compensation – Five or more common-interest employers may establish group worker’s compensation pools.<sup>59</sup>

Intergovernmental Personnel – Authorizes voluntary interchange of employees among federal, state, and local government for periods up to two years with two-year extensions possible.<sup>60</sup>

Jails; Construction for Joint Usage: (See also “Buildings”) – Any county may assist in the construction of a joint city-county jail in a city other than the county seat.<sup>61</sup>

Jails; Contract for Usage – Any county may contract with any city for use of the city jail.<sup>62</sup>

Jails – See “Police Protection” and “Buildings.”

Law Enforcement – See “Police Protection.”

Libraries; Board Contracts -Any county, city, school, or township library board may contract with any other to furnish or receive library services.<sup>63</sup>

Libraries; Interlocal Cooperation – Any public agency may join with any other in cooperating on libraries.<sup>64</sup>

Libraries; Regional Libraries – Any two or more adjoining counties or townships may establish and maintain a regional library, if approved by voters.<sup>65</sup>

Libraries; Regional System of Cooperating Libraries – Any one or more library boards may petition the state library of Kansas board for the establishment of a regional system of cooperating libraries.<sup>66</sup>

Machinery – See Article 17.2.1 “Interlocal Cooperation Statute.”

Mental Health – See “Health.”

Museums; Maintenance – Any county may maintain museums in any city, park district, or township used by county residents under agreements with the governing bodies thereof.<sup>67</sup>

Oregon Trail – The state will cooperate with cities and counties to mark the route of the Oregon Trail.<sup>68</sup>

Parks and Recreation; City-School District – Any city or school may cooperate to establish and operate a recreation system<sup>69</sup> or create a joint recreation commission.<sup>70</sup>

Parks and Recreation; Interlocal Cooperation – Any public agency may join with any other in cooperating on park and recreational programs and facilities.<sup>71</sup>

Parks and Recreation; Cooperation by Counties – Counties may contract for services or cooperate with another governmental agency to provide recreation activities and acquire property for recreational activities.<sup>72</sup>

Parks and Recreation; Programs for Aging – Counties may contract for services or cooperate with another governmental agency to provide recreational programs for the aging.<sup>73</sup>

Parks and Recreation; Misc. – In addition to general statutes above, see: K.S.A. § 19-2833a, K.S.A. § 19-2841 *et seq.*, K.S.A. § 13-1356 *et seq.*, K.S.A. § 15-914 *et seq.* (swimming pools).

Planning; Area – Any two or more cities or counties with adjoining planning jurisdictions or any county or cities within or adjacent to the county may jointly cooperate in the exercise and performance of planning powers.<sup>74</sup>

Planning; Board of Zoning Appeals – Any two or more cities or counties that have established a joint planning commission under K.S.A. § 12-744 may establish a joint board of zoning appeals.<sup>75</sup>

Planning; City Use of County Planning Commission – A county, regional, or metropolitan planning commission can serve as the planning commission for a city located within its territory.<sup>76</sup>

Planning; Subdivision Regulations Outside City – Any county and any city located within the county can establish a joint committee for subdivision regulation for the land area outside the city if both the city and county seek to regulate the land.<sup>77</sup>

Police Protection; Interlocal Cooperation – Any public agency may join with any other in cooperating on police protection.<sup>78</sup>

Police Protection; Contracts for Service – Any city or county may contract with any other city or county to perform governmental services.<sup>79</sup> Cities may contract with counties for the enforcement of city ordinances.<sup>80</sup>

Police Protection; Consolidated Agencies – A county and cities located within the county may form a countywide law enforcement agency if approved by referendum (limited application).<sup>81</sup>

Police Protection; Joint Police and Municipal Judges – Except in cities of first class, two or more cities can also appoint the same person as municipal judge or law enforcement officer.<sup>82</sup>

Police Protection; Use of Vehicles and Equipment in Johnson County – The county and cities located within the county may enter into agreements for the use or joint purchase of vehicles, broadcast equipment, and other machinery used by law enforcement agencies.<sup>83</sup>

Port Authorities – Cities and counties may establish joint port authorities to promote industrial development and commerce.<sup>84</sup>

Public Improvements – Any public agency may join with any other on public improvements.<sup>85</sup>

Public Improvements – See also “Buildings.”

Public Works Services; County Department of – Any county public works department may provide public works services to political subdivisions in the county under written agreements. Services may include: maintenance of public buildings, grounds, facilities, parks and recreation

facilities, construction and maintenance of sewers, drainage and flood control, airports, solid waste, building, planning and related inspection services for land use purposes, maintenance and custody of machinery, equipment, and other public works functions authorized by law.<sup>86</sup>

Recreation – See “Parks and Recreation.”

Refuse Disposal; Interlocal Cooperation – Any public agency may join with any other on refuse disposal.<sup>87</sup>

Refuse; Solid Waste Disposal – All counties may provide for the disposal of refuse through contract with cities located within the county. The county may provide the site or use the cities’ site.<sup>88</sup>

Refuse; Disposal in counties with a population of more than 250,000 – Joint county and city garbage and trash disposal is authorized.<sup>89</sup>

Refuse; Resources Recovery – Cities or counties or combinations may establish resource recovery facilities.<sup>90</sup>

Refuse; Solid Waste Management – Any two or more cities, counties, or combination of cities and counties may jointly plan and provide for the collection and disposal of refuse.<sup>91</sup>

Roads – See “Highways.”

Sales Tax; Joint County Vote – The Boards of any two or more contiguous counties by joint resolution may submit the question of imposing a sales tax to the voters of the involved counties on the same date.<sup>92</sup>

School Bus Transportation – Boards of education may contract with other units and with recreation commissions as to use of school buses for various purposes.<sup>93</sup>

School Census – Boards of education may use any reasonable method of obtaining the annual census of all children under the age of 21.<sup>94</sup>

School Districts; General – Boards of education of two or more school districts may cooperatively perform any services, duties, or functions required by law.<sup>95</sup>

School Districts; Bilingual Education – Two or more boards of education may enter into agreements as to bilingual education.<sup>96</sup>

School Districts; Elementary Guidance – Two or more boards of education may enter into agreements for elementary guidance programs.<sup>97</sup>

School Districts; Special Education – Two or more school districts may enter into agreements for special education.<sup>98</sup>

School Districts; Vocational Education – Two or more school districts may enter into agreements for vocational education.<sup>99</sup>

School Libraries – School Boards may contract with library boards for public use of school library facilities.<sup>100</sup> See also “Libraries.”

Sewage Disposal; Interlocal Cooperation – Any public agency may join with any other in cooperating on sewage disposal.<sup>101</sup>

Sewerage; Water Pollution Act – Any city, county, township, township sewer district, or other political subdivision authorized to levy taxes may improve their sewer system through a joint contract with one another.<sup>102</sup>

Sewerage; Storm Water – See “Flood Control.”

Sewerage; Misc. – In addition to general statutes above, see: K.S.A. § 14-714, K.S.A. § 13-10,107, K.S.A. § 12-631g.

Sewer Districts – Governing bodies of county sewer districts (waste water and storm water) may enter into interlocal agreements.<sup>103</sup>

Solid Waste – See “Refuse.”

Storm Water Control – See “Flood Control.”

Streets – See “Highways.”

Swimming Pools – See “Parks and Recreation.”

Taxes; Distribution – County Boards may enter into agreements with taxing subdivisions for the distribution of taxes and interest thereon.<sup>104</sup>

Taxes; Delinquent Special Assessments – Cities and counties may agree on distribution of interest on delinquent special assessments.<sup>105</sup>

Tax Foreclosure – Cities may assist counties in foreclosure action on delinquent tax liens or special assessment, or if the tax is three years delinquent, the city may foreclose.<sup>106</sup>

Tort Claims; Joint Insurance and Pooling – Any local unit through the Interlocal Cooperation Act may enter into agreements with any other local unit to provide for the purchase of insurance

for the defense of employees and for liability claims under the tort claims act and to establish pooling arrangements with other local units.<sup>107</sup>

Township Roads – See “Highways”; also K.S.A. § 68-560.

Traffic Control Devices – Any county, city, or other political subdivision may enter into agreements as to traffic control devices, even if they lie outside their boundaries or jurisdiction.<sup>108</sup>

Trash – See “Refuse.”

Utilities; Interlocal Cooperation – Any public agency may join with any other in cooperating on public utilities.<sup>109</sup>

Water – See “Flood Control” and “Utilities.”

Water; Ports – See “Port Authorities.”

Weather Modification – Any Public agency may join with any other in cooperating on weather modification.<sup>110</sup>

[Back to top](#)

## **ARTICLE 6: GENERAL HIGHWAY AND PUBLIC WORKS COOPERATIVE EFFORTS**

In addition to the above statutes, there are two general statutes that relate to cooperation for highways and to public works.

K.S.A. § 19-4501 *et seq.*, enacted in 1972, grants counties with departments of public works broad powers to provide a variety of public works services to local units within the county, under written agreement – see “Public Works Services” in the listing of specific statutes in Article 5.

K.S.A. § 68-169 relates to cooperation as to highways, roads, and streets. It allows counties, cities, other political subdivisions, and the secretary of transportation to enter into cooperation agreements for the purpose of building, designing, financing, planning, and maintaining highways, roads, and street projects. The agreement needs to state:

- (1) The duration;
- (2) The organizational powers and limits;
- (3) The purpose; and
- (4) The method of financing the project.

[Back to top](#)

## ARTICLE 7: A FEW PRACTICE POINTERS ABOUT INTERLOCAL AGREEMENTS

### 17.7.1 Introduction

The county attorney or counselor should review any agreements. The usual method of entering into agreements with other governmental entities is by executing an “interlocal agreement.” Because of the importance and legal liability involved, the law has a special procedure to review these documents.

The Interlocal Cooperation Act requires certain provisions be included in a written agreement.<sup>111</sup> The act also requires the Attorney General review all proposed agreements to determine whether the agreement is proper in form and compatible with state law.

[Back to top](#)

### 17.7.2 Two Types of Agreements

- (1) **Service Agreement.** Under this arrangement, one unit of local government contracts with another to provide one or more services for a stated fee. The terms of the contract are negotiated, but the supplier has ultimate control of the administration of the services.
- (2) **Joint Agreement.** This arrangement is distinguishable from the service contract in that responsibility for the performance of a particular function or the construction and operation of a public facility is shared by the participating units.

In preparing a mutual cooperation agreement or contract, all parties should carefully consider the contract provisions and their exact wording and effect. The good intentions of a cooperative venture can be quickly ruined if all parties do not have mutual understanding of the full ramifications of all provisions.

Additionally, the parties must review the statutory authority for each service area to ensure that any special conditions are met. The language should be drafted in such a manner that specifically spells out and limits the county’s liability. ***Do not assume liability that is not yours.***

The governing bodies adopt interlocal agreements by passing resolutions. They should be annually reviewed by your county attorney or county counselor. Agencies should refrain from entering into letters of understanding or other informally drafted documents; these documents do create legally binding contracts and may not take into consideration risks of liability. Agreements should be drafted and reviewed by your county attorney or county counselor.

Agreements between governmental agencies do not necessarily have to be interlocal in nature. K.S.A. § 12-2908 provides cities and counties with alternative contractual authority. This authority is often used by cities or counties to contract for a service instead of creating an interlocal agreement.

[Back to top](#)

## CHAPTER 17 ENDNOTES

- 
- <sup>1</sup> K.S.A. § 12-2901 *et seq.*  
<sup>2</sup> K.S.A. §§ 12-2908, 12-2909.  
<sup>3</sup> K.S.A. § 12-3901 *et seq.*  
<sup>4</sup> K.S.A. §§ 19-4501 *et seq.*, 68-169.  
<sup>5</sup> K.S.A. § 12-2904(d).  
<sup>6</sup> K.S.A. § 12-2904(g).  
<sup>7</sup> K.S.A. § 12-2905.  
<sup>8</sup> A.G. 88-37.  
<sup>9</sup> K.S.A. § 12-3901 *et seq.*  
<sup>10</sup> K.S.A. § 12-3903(b).  
<sup>11</sup> K.S.A. § 12-3903(c).  
<sup>12</sup> A.G. 94-19.  
<sup>13</sup> A.G. 88-5.  
<sup>14</sup> A.G. 98-33.  
<sup>15</sup> K.S.A. § 2-615.  
<sup>16</sup> K.S.A. §§ 3-119a, 3-120.  
<sup>17</sup> K.S.A. § 3-606.  
<sup>18</sup> K.S.A. §§ 65-6113, 65-6116.  
<sup>19</sup> K.S.A. § 65-6113.  
<sup>20</sup> K.S.A. §§ 19-3621, 65-6113, 19-3617.  
<sup>21</sup> K.S.A. §§ 19-3613, 19-3622, 19-3614a, 65-6112.  
<sup>22</sup> K.S.A. § 65-6113.  
<sup>23</sup> K.S.A. § 19-428.  
<sup>24</sup> K.S.A. § 12-150.  
<sup>25</sup> K.S.A. §§ 12-1736 *et seq.*, 19-15, 115 *et seq.*  
<sup>26</sup> K.S.A. §§ 19-15, 115 *et seq.*, 12-1736 *et seq.*  
<sup>27</sup> K.S.A. § 80-107.  
<sup>28</sup> K.S.A. § 12-1757 *et seq.*  
<sup>29</sup> K.S.A. § 12-2901 *et seq.*  
<sup>30</sup> *Id.*  
<sup>31</sup> *Id.*  
<sup>32</sup> K.S.A. § 48-930.  
<sup>33</sup> K.S.A. § 12-2901 *et seq.* Counties; *also see* K.S.A. § 19-4101 *et seq.*  
<sup>34</sup> K.S.A. §§ 72-13, 100; 12-2901 *et seq.*  
<sup>35</sup> K.S.A. § 12-885 *et seq.*  
<sup>36</sup> K.S.A. § 28-118.  
<sup>37</sup> K.S.A. § 12-111.  
<sup>38</sup> K.S.A. § 19-3601 *et seq.*  
<sup>39</sup> K.S.A. § 12-2901 *et seq.*  
<sup>40</sup> *Id.*  
<sup>41</sup> K.S.A. § 12-617.  
<sup>42</sup> K.S.A. § 65-3016.  
<sup>43</sup> K.S.A. § 65-205 *et seq.*  
<sup>44</sup> K.S.A. § 65-301.  
<sup>45</sup> K.S.A. §§ 12-2901, 12-2908, 12-3901.  
<sup>46</sup> K.S.A. § 19-4001.  
<sup>47</sup> K.S.A. § 65-211.  
<sup>48</sup> K.S.A. §§ 65-202; 72-6263.  
<sup>49</sup> K.S.A. § 68-580 *et seq.*  
<sup>50</sup> K.S.A. § 68-584.  
<sup>51</sup> K.S.A. § 68-169.



---

<sup>52</sup> K.S.A. §§ 68-572, 68-560.  
<sup>53</sup> K.S.A. § 10-204.  
<sup>54</sup> K.S.A. § 68-506f.  
<sup>55</sup> K.S.A. § 68-141a *et seq.*  
<sup>56</sup> K.S.A. §§ 80-2503, 14-6,110, 19-4603 *et seq.*  
<sup>57</sup> K.S.A. § 12-5231.  
<sup>58</sup> K.S.A. § 17-2348.  
<sup>59</sup> K.S.A. § 12-2617.  
<sup>60</sup> K.S.A. § 75-4401 *et seq.*  
<sup>61</sup> K.S.A. § 19-1923.  
<sup>62</sup> K.S.A. § 19-1929.  
<sup>63</sup> K.S.A. §§ 12-1225(f), 12-1230, 72-7117. *See also* “School Libraries.”  
<sup>64</sup> K.S.A. § 12-2901 *et seq.* *See also* K.S.A. § 75-2575.  
<sup>65</sup> K.S.A. § 12-1231.  
<sup>66</sup> K.S.A. § 75-2547 *et seq.*  
<sup>67</sup> K.S.A. § 19-2801.  
<sup>68</sup> K.S.A. § 68-1032.  
<sup>69</sup> K.S.A. § 12-1924; A.G. 81-248, 82-192, 2000-4.  
<sup>70</sup> K.S.A. § 12-1926; A.G. 2000-4.  
<sup>71</sup> K.S.A. § 12-2901 *et seq.*  
<sup>72</sup> K.S.A. § 19-2801.  
<sup>73</sup> K.S.A. § 19-2801.  
<sup>74</sup> K.S.A. § 12-744; A.G. 77-322, 80-114.  
<sup>75</sup> K.S.A. § 12-759.  
<sup>76</sup> K.S.A. § 12-744; A.G. 82-197, 2001-24.  
<sup>77</sup> K.S.A. § 12-750.  
<sup>78</sup> K.S.A. § 12-2901 *et seq.*  
<sup>79</sup> K.S.A. § 12-2908.  
<sup>80</sup> K.S.A. § 12-2909.  
<sup>81</sup> K.S.A. § 19-4401 *et seq.*  
<sup>82</sup> K.S.A. §§ 14-205, 15-209, 15-1602.  
<sup>83</sup> K.S.A. § 19-2645.  
<sup>84</sup> K.S.A. §§ 19-2645, 12-3402.  
<sup>85</sup> K.S.A. § 12-2901 *et seq.*  
<sup>86</sup> K.S.A. § 19-4501 *et seq.*  
<sup>87</sup> K.S.A. § 12-2901 *et seq.*  
<sup>88</sup> K.S.A. § 19-2658 *et seq.*  
<sup>89</sup> K.S.A. § 65-204.  
<sup>90</sup> K.S.A. § 65-3418.  
<sup>91</sup> K.S.A. § 65-3410; A.G. 2000-46.  
<sup>92</sup> K.S.A. § 12-187(c); A.G. 2000-16, 2000-52, 2001-14.  
<sup>93</sup> K.S.A. § 72-6487; A.G. 2000-57. *See also* K.S.A. § 72-6492.  
<sup>94</sup> K.S.A. § 72-3119  
<sup>95</sup> K.S.A. § 72-13,100.  
<sup>96</sup> K.S.A. § 72-3611.  
<sup>97</sup> K.S.A. § 72-13,103.  
<sup>98</sup> K.S.A. § 72-3412.  
<sup>99</sup> K.S.A. § 72-3814.  
<sup>100</sup> K.S.A. § 72-1416.  
<sup>101</sup> K.S.A. § 12-2901 *et seq.*  
<sup>102</sup> K.S.A. § 12-3101 *et seq.*  
<sup>103</sup> K.S.A. § 19-27a01 *et seq.*  
<sup>104</sup> K.S.A. § 12-1678a(d).

---

<sup>105</sup> K.S.A. § 79-2401a.

<sup>106</sup> K.S.A. § 79-2801.

<sup>107</sup> K.S.A. §§ 75-6111(b), 12-2901 *et seq.*

<sup>108</sup> K.S.A. § 68-169.

<sup>109</sup> K.S.A. § 12-2901 *et seq.* See also “Energy.”

<sup>110</sup> K.S.A. § 12-2901 *et seq.*

<sup>111</sup> K.S.A. § 12-2904.

## **Chapter 18: PURCHASE AND SALE OF PROPERTY**

### **ARTICLE 1: PURCHASING**

#### **18.1.1 Purchasing Generally**

The Board has final responsibility for purchases made on behalf of the county. The cash basis and budget laws require the county clerk to keep a timely record of each purchase. In order to prevent spending more than the budget authority allows, or spending more than the county has on hand, a purchase-order system is used. The governing body of most counties formally approves only major purchases (exceeding \$5,000). The principal job of the governing body is to ensure a reliable purchasing system is in place and not to make actual purchases.

For ordinary purchases, counties should regularly use a purchase-order system to empower the county clerk or other official to make purchases up to a certain dollar amount on behalf of the Board. The county clerk should receive a copy of the purchase order. The county clerk must maintain a book that has all the receipts and expenditures of the county. This book includes expenditures for every township, district, and other officers in the county.<sup>1</sup> K.S.A. § 19-260a *et seq.*, as amended, provides for a purchasing officer in Johnson and Sedgwick counties.

[Back to top](#)

#### **18.1.2 Purchasing by Bids**

Although there is no uniform state law that requires counties to make purchases by bids, most counties consider it to be a sound business practice. Some counties use a Bid Board Procedure as established by charter resolution.

[Back to top](#)

#### **18.1.3 Requisitions**

Where the county clerk or other officer serves as purchasing agent and is expected to make purchases, many counties use requisition forms—a document to formally request an item for purchase. When a department desires to make a purchase, a county official or employee prepares the requisition form and submits it to the purchasing officer.

[Back to top](#)

#### **18.1.4 Purchase Orders**

In practically all cases, except where there is a formal contract, counties should use a purchase order. To supplement a purchase order system, the county clerk often keeps an encumbrance or voucher register—a book recording those entitled to payment. The purchase-order form often provides for three separately colored copies. The vendor receives the original and a first copy, the first copy being for the vendor's files. After delivery, the order is completed and presented to the county. The party issuing the purchase order to the finance officer delivers the second copy, so that the cash basis and budget law records may be made. The last copy is kept

by the issuing officer who (when the materials are furnished) approves it. Where a purchase order is impractical, such as when county cars are serviced at gasoline stations or for out-of-town travel expenses, the Board may desire to use purchase cards issued by a financial institution (see the following section for more information).

[Back to top](#)

#### **18.1.5 Purchase Cards**

Financial institutions are able to issue purchase cards to a county that personnel may use much like a credit card for purchases such as out-of-town travel expenses. Purchase cards may be limited by not only maximum amount of purchase, but also types of purchases (e.g., hotel rooms or food expenditures). These limits may be specified in both the purchase card agreement with the issuing financial institution and a written county policy concerning purchase card use. This written policy should also specify procedures to monitor use of the cards, similar to those procedures used with purchase orders. Counties should require individuals who use a purchase card to save and submit all receipts associated with the purchase card to provide an accurate accounting of expenses associated with the card.

[Back to top](#)

#### **18.1.6 Recommended Practices**

Specifications should be prepared that adequately describe the product required by the county. When practicable, similar commodities used in different departments should be standardized. While the writing of proper specifications is frequently a tedious task, it generally insures that products purchased will be of satisfactory quality. Furthermore, a uniform approach might lead to a reduction in miscommunication between vendors and the county.

[Back to top](#)

## **ARTICLE 2: ESTABLISHING WRITTEN PURCHASING POLICIES AND PRACTICES<sup>2</sup>**

### **18.2.1 Introduction**

Contracting for goods and services to carry out governmental operations is a necessary function of government. Purchases of goods and services by state and local governments continue to rise steadily. A significant portion of the expenditures for operations of the average municipality is attributed to the procurement of goods and services necessary for various governmental functions and responsibilities at the same time.

Over the years, organizations like the [National Institute for Public Procurement](#) (NIGP is still the common acronym for the institute, previously known as the “National Institute of Governmental Purchasing”), the [International Municipal Lawyers Association](#) (IMLA), the [National Association of State Procurement Officials](#) (NASPO), the [Council of State Governments](#) (CSG), and the [American Bar Association](#) (ABA) have examined the public-purchasing function of state and local governments and have made recommendations for improving it. The recommendations include comprehensive studies, reports, and model codes, including the

ABA's State and Local Model Procurement Code, the ABA's Model Procurement Ordinance, and IMLA's Model Purchasing Ordinance. As one noted authority on the subject emphasizes, "One of the major needs of any [local government] is a purchasing process that assures efficient, cost-effective acquisition of goods, capital equipment, and services."<sup>3</sup>

[Back to top](#)

### **18.2.2 Purpose**

The purpose of this section is to highlight some of the essential elements and benefits of a formal purchasing policy for local governments. It does not specifically address procurement for construction or other public works projects, which are discussed in article 3 of this chapter. Procurement for construction contracts in general, however, is subject to the same principles and procedures that apply to the purchase of goods and services. As used in this article, a formal purchasing policy means a written set of guidelines with broad statements of policy and purpose, and prescribed methods of procedure, which together outline and establish the general rationale and manner by which a local unit of government acquires goods and services.

[Back to top](#)

### **18.2.3 The Public Purchasing Function**

Public purchasing is commonly viewed as a process of acquiring quality goods and services at favorable prices. In this regard, it is not very different from the purchasing objective found in the private sector. Yet, there are some basic distinctions between the two. Public purchasing holds the public interest paramount. Unlike private industry, public purchasing has the added responsibility of safeguarding the interests of the taxpayer and must continually conduct itself in an environment of public scrutiny.

Since public purchasing involves the expenditure of public monies, it calls for:

- (1) Nonrestrictive specifications;
- (2) Prohibitions against negotiation following the public opening of sealed bids;
- (3) Impartiality;
- (4) Openness;
- (5) Avoidance of conflicts of interest; and
- (6) Conservation of funds.

An underlying principle of public purchasing is that price is not the only criterion. Thus, the primary objectives of public purchasing become competition, fairness, impartiality, openness, and prudent expenditure of public funds. Stated another way, "Fair and open competition is a basic tenet of public procurement. Competition reduces the opportunity for favoritism and inspires public confidence."<sup>4</sup>

[Back to top](#)

#### **18.2.4 Types of Procurement Practices**

The competitive procedures most commonly used by local governments in contracting for goods and services fall broadly into three categories (discussion follows):

- (1) Competitive Sealed Bidding;
- (2) Competitive Sealed Proposals (or competitive negotiation); and
- (3) Competitive Quotations.

[Back to top](#)

#### **18.2.5 Competitive Sealed Bidding**

As a general rule, municipal contracts are not required to allow wider competitive bidding in the absence of statutory, charter, or ordinance (or resolution) requirements.<sup>5</sup> But competitive sealed bidding is generally the preferred method of procurement. In connection with the letting of municipal contracts, courts have recognized this method as a valid exercise of police power.<sup>6</sup> Competitive bidding legislation is designed to invite competition, guard against favoritism and corruption, and secure the best work or supplies at the lowest price practicable.<sup>7</sup> It is enacted for the benefit of taxpayers and not for the benefit or enrichment of bidders.<sup>8</sup> But the factors or qualities that will be used in assessing the best bidder should be disclosed to avoid misunderstandings with bidders.<sup>9</sup>

[Back to top](#)

#### **18.2.6 Elements of Competitive Bidding**

The competitive bid process generally embodies the following elements:

- (1) An invitation for bids containing instructions to bidders, the description and specifications of the needed item(s), all applicable contractual terms and conditions, and a statement of the time, date, and place for receipt and opening of the bids;
- (2) Adequate and reasonable public notice of the public opening;
- (3) A statement of bid opening procedures;
- (4) Criteria for the evaluation and acceptance of the bids;
- (5) Rules regarding the correction or withdrawal of bids; and
- (6) Procedures for bid award and criteria for cancellation or modification of awards.<sup>10</sup>

[Back to top](#)

#### **18.2.7 Specifications**

Typically, the competitive bidding process begins with a determination of need followed by the preparation of specifications. The central purposes of competitive bidding assure that the item sought to be purchased will be of a quality suitable for its intended use and to invite maximum reasonable competition. Toward this end, the specifications may not be unduly restrictive or so narrowly drawn as to frustrate the possibility of achieving competition in the open market.

There can be, of course, exceptions to this general principle, as in the case of a patented item where there can be no true or meaningful competition.<sup>11</sup>

[Back to top](#)

### **18.2.8 Public Notice**

In general, public notice of competitive bids is in keeping with openness of the public purchasing process. Typically, notice is given in newspapers of general circulation. Consider, however, that even in the absence of applicable statute or regulations, the courts have imposed the requirement of a reasonable time frame to afford bidders the opportunity for deliberation and preparation of their bids.<sup>12</sup>

[Back to top](#)

### **18.2.9 Submission of Bids**

Bids must be submitted in the manner and form specified in the invitation. As a general rule, bids must be in definite terms and conform to the advertisement. They are subject to rejection if they fail to fully and literally comply with the advertisement specifications and other portions of the bid package. It is a common practice to require bidders to accompany their bid with a bid bond or other form of bid security to serve as a guarantee against a bid being withdrawn without justification after all bids have been opened. The bid bond serves as a representation that the bid is submitted in good faith. It provides protection for the taxpayer against failure on the part of the bidder to enter into the contract following an award to that bidder.

[Back to top](#)

### **18.2.10 Public Openings**

The competitive bidding process calls for public openings on the date and at the time and place designated in the invitation. Counties must strictly adhere to the place, time, and method of procedure. Public bid opening reduces the possibility of collusion and favoritism and fosters public confidence in the purchasing process.

[Back to top](#)

### **18.2.11 Modification or Withdrawal of Bids**

Often during the bidding process, requests are made by bidders to modify or withdraw bids. As a general rule, the modification or withdrawal of a bid prior to public opening is permissible.<sup>13</sup> Bidder should, however, make any request to modify or withdraw a bid in writing. While bids cannot be altered in substance following public opening, mere irregularities in form may be corrected or disregarded after the opening. With respect to withdrawal of bids following public bid opening, generally a bid may be withdrawn before acceptance, if proper notice is given.

[Back to top](#)

### **18.2.12 Mistakes in Bids**

Mistakes in bids, actual or alleged, are quite common. As a general rule, a bidder may correct a mistake or withdraw the bid containing an error prior to bid opening.<sup>14</sup> After bids are opened,

but before award, a bidder may generally correct a mistake only if it is minor and the intent of the bid is obvious; that is, if the bid is in substantial compliance with the manner and form specified in the invitation to bid and the correction does not improve the bidder's competitive position over the other bidders.

Any remedy for a mistake becomes more difficult following award of contract. Generally, a mistake in a bid discovered after an award does not relieve the bidder from performance under the contract unless the error is so substantial that the refusal would be unconscionable. For further discussion concerning the treatment of mistakes in bids, see section 18.3.10 of article 3 of this chapter.

[Back to top](#)

#### **18.2.13 Award**

Bids are binding offers to enter into a contract but do not give rise to a contract until there is an acceptance of the bid by the municipality.<sup>15</sup> Consequently, the bid must be in a form that—upon acceptance by the municipality—will constitute a valid obligation on the part of the bidder to enter into a formal contract. Where competitive bidding is required, the statutory, charter, or ordinance provisions ordinarily specify that the municipality will award the contract to the “lowest responsible bidder” or the “lowest and best bidder,” or other similar words. These provisions protect the public interest. The bidder must protect his own interests.

[Back to top](#)

#### **18.2.14 Lowest Responsible Bidder Defined**

The term “lowest responsible bidder” implies skill, judgment, and integrity necessary for the faithful performance of the contract, as well as sufficient financial resources.<sup>16</sup> Courts have held that determination of who is the lowest responsible bidder does not rest upon the exercise of an arbitrary and unlimited discretion, but upon a bona fide judgment based upon facts tending to support the determination.<sup>17</sup> Thus, in determining the lowest responsible bidder, a municipality may take into account not only price but factors like financial responsibility, skill and experience, facilities for performing the work, previous performance, and any other matter reasonably touching upon the ability of the bidder to effectively perform the contract.

[Back to top](#)

#### **18.2.15 Right to Reject Any or All Bids**

Local authorities generally reserve the right and discretion to reject “any and all bids.” As a general rule, if a municipality is not required to award a contract to the lowest bidder, it may reject the bid and leave the contract to another. When doing so, however, municipalities must observe good faith and extend to all bidders fair consideration, thus avoiding favoritism and abuse of discretion. Although the courts will not disturb an honest exercise of discretion, they will intervene to protect an arbitrary rejection of a bid if the effect is to defeat the objective and purposes of competition.<sup>18</sup>

[Back to top](#)



### **18.2.16 Competitive Sealed Proposals**

Competitive sealed proposals (or competitive negotiation) are a procurement method often employed for acquiring items or services exempted from competitive bid statutes or local laws. This method is also used when competitive sealed bidding is neither practicable nor advantageous to the municipality. While somewhat dissimilar from the competitive bidding process, this method seeks to preserve some of the beneficial elements of competition. Competitive negotiation is primarily used by local governments in obtaining professional services because it allows for the evaluation of proposals based on important factors beyond price, such as experience, approach to the problem, staffing resources, and capabilities.

[Back to top](#)

### **18.2.17 Request for Proposals (RFPs)**

Unlike competitive bidding, which uses an invitation for a bid, the competitive negotiation method uses a request for proposal. In many respects, the RFP is similar in form and content to the invitation for bid. Typically, it consists of a description of the item or service desired, the criteria for evaluating the proposals, and other relevant material relating to the time and manner of performance. Additionally, many procedural characteristics of competitive sealed bidding are found in the competitive negotiation process. For example, competitive sealed proposals will be received and opened. Evaluation criteria of RFPs are usually divided into three main categories:

- (1) Technical capability and the approach for meeting performance requirements;
- (2) Competitiveness; and
- (3) Reasonableness of price.<sup>19</sup>

The principal difference between competitive sealed bidding and competitive sealed proposals is that the bidding process requires that bids be evaluated, and awards made solely on the basis of the information contained in the bids at the time of public opening. On the other hand, the competitive negotiation process permits discussions after proposals have been opened “provided that adequate precautions are taken to treat each offer fairly and to ensure that information gleaned from competing proposals is not disclosed to other offerors.”<sup>20</sup>

[Back to top](#)

### **18.2.18 Competitive Quotations**

For competitive procurement involving less than the minimum dollar amount requiring sealed bidding, competitive quotations are ordinarily the best method. This method is most appropriate for transactions designated as “informal bidding” or “small purchases.” The competitive quotations method “recognizes that certain public purchases do not justify the administrative time and expense necessary for the conduct of competitive sealed bidding.”<sup>21</sup> The objective of this informal method of public procurement remains, in principle, the same as sealed bidding—to obtain goods and services at favorable prices without regard to partiality and favoritism. But many of the requirements associated with competitive sealed bidding do

not apply to competitive quotations. These include public notice and opening of responses, strict adherence to a time of opening, and designation of the criteria to be used in evaluating the responses to the solicitation.

Generally, counties seek at least three responses to a quotation. Ordinarily, they should be in writing or confirmed in writing since written documentation is all important to the public purchasing process. Purchase descriptions should avoid favoring a particular product and a representative number of prospective suppliers should be solicited. Maintaining integrity, credibility, and openness are as important to the process of competitive quotations as they are to the procurement methods of competitive sealed bidding and competitive negotiation.

[Back to top](#)

#### **18.2.19 Considering a Purchasing Policy**

Public purchasing policy is dictated in a variety of ways. Absent a formal policy, it may be expressed and structured through federal, state and local laws, rules, and regulations. Less formally, it may evolve through a history of unwritten practices. Finally, policy may be defined by the courts, such as by holdings that the purpose behind laws requiring competitive bidding is to invite competition and guard against favoritism. The unique characteristics of public purchasing require a consistent means for carrying out the mandate of economy for taxpayers and inspiring confidence in public officials.

[Back to top](#)

#### **18.2.20 Purpose of a Formal Purchasing Policy**

A formal policy:

- Defines and clarifies purchasing authority and responsibilities;
- Promotes effective competition among prospective suppliers of goods and services;
- Inspires public confidence and fosters professionalism in government;
- Promotes fair and equitable treatment of all suppliers of goods and services;
- Provides safeguards against corruption, fraud, and profiteering at the public's expense;
- Permits the continued developments of procurement policies and procedures; and
- Provides uniformity of application to purchasing practices.

[Back to top](#)

#### **18.2.21 A Policy Document**

Perhaps the first step for a local government wishing to form a written purchasing policy is to fully describe in writing the existing procedures and practices that are informally being followed by that municipality. Existing practices can then be refined in writing to include some of the recommendations in this article. The final policy should:

- (1) Be practical and workable;

- (2) Meet the purposes of a purchasing policy noted above; and
- (3) Help achieve the potential benefits of a purchasing policy as described below.

[Back to top](#)

### **18.2.22 Methods of Procurement**

Some of the most common methods for procurement specified in purchasing procedures are: competitive sealed bidding; competitive sealed proposals; competitive quotations; sole sources (when only one supplier exists); and emergency procurement (when there is a threat to public health and welfare or safety). This last method usually does not require competition.

[Back to top](#)

### **18.2.23 Elements of a Purchasing Policy**

The essential elements appearing in most purchasing policies are:

- (1) A declaration of policy and scope;
- (2) A statement of purpose;
- (3) Definitions of terms;
- (4) Identification of the purchasing authority;
- (5) Specific areas of functional responsibility; and
- (6) Methods for procurement.

There may also be a general statement that competitive sealed bidding is the preferred method of procurement with a proviso that if it is not practical and advantageous to use sealed bids, competitive sealed proposals (RFPs) will be used or competitive quotations for purchases involving smaller dollar amounts.

Some other provisions commonly addressed in purchasing policies:

- (1) Extensions or renewals of existing contracts (these are commonly used when it is in the best interests of the municipality or when the goods or services cannot be acquired elsewhere at a competitive cost);
- (2) Change orders issued to cover special costs or to address changes in terms and conditions resulting from unforeseen problems not addressed in the bidding or contract;
- (3) Changes that may be recommended after the contract award;
- (4) Development of specifications; and
- (5) Types of purchases exempted from purchasing procedural requirements.

Your procedural manual should include statements of purpose and philosophy to guide those involved in the day-to-day acquisition of public goods and services.

[Back to top](#)

#### **18.2.24 Benefits of a Purchasing Policy**

Once developed and implemented, a purchasing policy can provide some of the following benefits:

- Creates cost savings because of improved specifications, bidding procedures, and lower prices;
- Increases efficiency by significantly reducing misunderstandings, uncertainties, and questions regarding repetitive buying situations;
- Maximizes competition by consistent application and reducing, if not eliminating, concerns of favoritism among suppliers;
- Fosters favorable relationships with the business community;
- Promotes integrity and honesty throughout governmental operations; and
- Establishes accountability.

[Back to top](#)

#### **18.2.25 Conclusion**

Developing a public purchasing policy is no small task. It involves consideration of existing law, public policy, philosophy, and commitment to use. But it is a worthwhile investment by the county. A public purchasing policy that clearly defines policies, purposes, procedures, and responsibilities can serve as an important tool in establishing an effective buying program for local government.

[Back to top](#)

### **ARTICLE 3: BID PROCEDURES FOR CONSTRUCTION & PUBLIC IMPROVEMENTS**

#### **18.3.1 Bid Procedure**

Kansas does not have a uniform state statute that specifies the manner in which counties prepare and offer construction bids. Some counties have procedures set out by resolution.

[Back to top](#)

#### **18.3.2 County Buildings and Bridges**

K.S.A. § 19-214 requires that all contracts for the expenditure of more than \$25,000 of county money for the construction or repair of any of the following edifices be awarded, by public letting, to the lowest and best bid:

- (1) Courthouse;
- (2) Jail;
- (3) Other county buildings; and
- (4) Construction of any bridge, highway, road, dam turnpike or related structure or stand-alone parking lot.<sup>22</sup>

Under section (b) of the statute, professional services, road improvements, contracts of insurance, and repairs of any courthouse, jail, or other county buildings as a result of a disaster are exempt from these bid requirements provisions.<sup>23</sup> Note that bid requirements also apply to bridge repairs or replacements made under K.S.A. § 68-1414.

[Back to top](#)

### **18.3.3 County Road Work**

Generally, K.S.A. § 68-520 authorizes county roadwork to be done with or without a contract. The Board in constructing, surfacing, repairing, or maintaining county roads, may:

- (1) Let contracts for all or any part of such work;
- (2) Buy the materials and contract all or any part of the labor; or
- (3) Purchase or rent machinery and other equipment and employ labor under the direction of the county engineer.

But before beginning to construct, surface, or repair any road by day labor, the approved plans and specifications and an estimate of the cost must be filed in the office of the county clerk.

[Back to top](#)

### **18.3.4 Contracting Not Required**

Kansas law does not require letting road projects for contract.<sup>24</sup> In ruling that counties have the authority to construct roads without letting contracts, the Kansas Supreme Court said:

That last quoted section of the statute [K.S.A. § 68-520] gives to the board of county commissioners authority to do the work of constructing a road without letting a contract for such construction. The state impliedly gives to the board of county commissioners authority to all things reasonable necessary to be done when the county itself employs the labor and buys the machinery with which to do the work of constructing a road. In constructing a hard-surfaced road, it is necessary to use heavy machinery and employ a large number of men.<sup>25</sup>

[Back to top](#)

### **18.3.5 When Contracts are Let for County Road Work**

When contracts are let for county road work and if the cost is greater than \$25,000, counties must follow K.S.A. § 68-521 and let the contract to the lowest responsible bidder. Counties must strictly follow the dollar thresholds in order to comply with the intent of the legislature.<sup>26</sup>

K.S.A. § 68-704 requires bidding for road improvement contracts in benefit districts. Some federal grants also require a contract bidding procedure.

The state provides procedures for laying out, relocating, altering, widening, or vacating a road for purposes of eliminating sharp turns or other dangerous places, for the construction of a

road, or for an extension of a bridge or culvert.<sup>27</sup> If property is required for such a project, the Board may acquire it by purchase, eminent domain, or donation.

[Back to top](#)

### **18.3.6 County Responsibilities**

The county must provide appropriate bid forms and public notice whenever it offers a public bid. K.S.A. § 19-215 provides the notice requirements. The county should take steps so only responsible contractors receive contracts and the lowest and best price is obtained through competitive bids.

[Back to top](#)

### **18.3.7 County Bid Requirements Suspended for Disasters**

When disaster strikes, Kansas law allows for non-compliance with the bidding requirements when repairing or reconstructing bridges or roads.<sup>28</sup> The following prerequisites suspend the public bidding requirements:

- (1) The bridge or road must have been damaged or destroyed because of a disaster;
- (2) The governor has declared the county or part of a county as a disaster area;
- (3) The Board of County Commissioners finds that a hardship will result if repair or reconstruction is not done immediately;
- (4) The Board of County Commissioners has obtained an estimate of the cost from the county engineer, or if there is no engineer, then from the Kansas Department of Transportation; and
- (5) The contract is awarded within 60 days of the governor's declaration.

[Back to top](#)

### **18.3.8 Modifying Bid Contracts**

There is foundation for modifying contracts without the county having to rebid when all bids are over the budgeted amount of the contract. Under a 1992 opinion, the Attorney General suggests a county may negotiate with the lowest bidder on the contract if the final contract is not materially different from the initial contract.<sup>29</sup> If the final contract calls for different bids, a material change results, and the county must reinitiate public bidding.<sup>30</sup>

[Back to top](#)

### **18.3.9 Bidding Practices**

When counties use formal bidding procedures, they *must* stick to their own rules. This includes never opening bids in advance, never accepting late bids, and disallowing bid changes, unless all other bidders have the same chance. It is helpful to have a checklist of bid requirements—for the county and bidders—that everyone must comply with before accepting and considering bids. Some counties use a board of administrative officials who make bid recommendations to the Board.

Counties must also ensure they meet the statutory requirements for bid letting. The Kansas Supreme Court has held that the purpose of competitive bid requirements is for the protection of the public rather than the bidders.<sup>31</sup> The statutes protect the public purpose and they must be strictly followed.

[Back to top](#)

### **18.3.10 Public Building Commission**

A city or county may create a public building commission (PBC), which is considered a municipal corporation able to exercise the powers granted in the statutory act.<sup>32</sup>

The county adopts a resolution creating a PBC. The PBC must have three to nine members. A PBC may acquire sites for, construct, reconstruct, equip, and furnish a building or other facility. A PBC may issue revenue bonds to provide funds for acquiring, erecting, equipping, and repairing facilities. Only revenue from rents and revenues derived from the operation and use of the building or facilities acquired by the PBC may be used to pay off the bonds.

[Back to top](#)

## **ARTICLE 4: SELLING COUNTY PROPERTY**

### **18.4.1 Introduction**

Generally, counties have powers to “purchase and hold real and personal property for the use of the county, to sell and convey any real or personal property owned by the county, and make such order respecting the same as may be deemed conducive to the interest of the inhabitants” as well as “to make all contracts and do all other acts in relation to the property and concerns of the county, necessary to exercise of its corporate or administrative powers.”<sup>33</sup> Kansas courts have held, however, that when real estate is dedicated to public use, the county holds the property as a mere agent of the public, and in trust for the county use.<sup>34</sup>

One essential issue is the value of any property before a sale, and the KAC recommends that counties retain an independent appraiser. Another key determinate is the type of property, as requirements for selling real property differ from selling personal property.

[Back to top](#)

### **18.4.2 Disposal of County Property**

If the county wishes to sell property, it can only do so with the unanimous vote of the Board. If the county has five commissioners, four of the five can pass the measure. State statutes provide two acceptable methods for disposing of county property. The first is found in K.S.A. § 19-211(a) and sets procedures for the county. The second approach allows the Board to design their own process as long as it involves the following procedures:<sup>35</sup>

- (1) In lieu of following the procedures established in subsection (a), a county commission may adopt a resolution establishing an alternate methodology for the disposal of property. Such alternate methodology for the disposal of property shall contain, at a minimum, procedures for:

- (A) Notification of the public of the property to be sold;
  - (B) Describing the property to be sold; and
  - (C) The method of sale, including, but not limited to, fixed price, negotiated bid, sealed bid, public auction or auction, or any other method of sale which allows public participation.
- (2) Any methodology for the disposal of property established pursuant to this subsection may contain different procedures for real and personal property.

There are several exceptions to these procedures in K.S.A. § 19-211(c)–(h).

[Back to top](#)

### **18.4.3 Trade-in Procedure to Dispose of County Property**

Disposing of property by trading property is not explicitly covered in K.S.A. § 19-211. The Attorney General has opined that the county can dispose of property valued at less than \$50,000 by trading the property.<sup>36</sup> A county has the power to dispose of property by trading property if it serves the overall interest of the citizens of the county as a whole. K.S.A. § 19-211 should be liberally interpreted for the purpose of giving counties the largest measure of self-government.

[Back to top](#)

### **18.4.4 County Hospital Property**

County hospitals are governed by a board of trustees comprised of trustees appointed by the Board of County Commissioners or elected by the citizens of the county. The board of trustees has autonomous powers that extend further than powers granted to administrative arms of county governments. These powers include exclusive control over the expenditures of all county hospital money, except money that came from the issuance of revenue bonds.<sup>37</sup>

When county hospitals are created, any property that becomes a part of the county hospital must vest to the county. Hospitals cannot have title over real and personal property.<sup>38</sup> A hospital operated by a city or hospital district may be conveyed, transferred, or donated to a county for the purpose of creating a county hospital.<sup>39</sup> In order for this transfer to take place, the issue must go before the qualified electors. When the transaction is complete, the governing body of the hospital district or governing body of a city will convey the hospital property to the county. Any unencumbered funds that the hospital has on January 1 when the transfer is complete must be placed in an operational or maintenance fund set up for the newly established county hospital.

The county hospital board of trustees can lease hospital property. The county hospital can enter into contracts to lease hospital property, including real property.<sup>40</sup> County hospitals cannot sell hospital property unless the Board of County Commissioners authorizes the sale. The county maintains title to all real and personal property owned by the county hospital. County hospitals do not have the inherent right to sell county property that includes county hospital property. The county hospital also does not have the inherent right to the proceeds



coming from the sale or disposition of county hospital property.<sup>41</sup> Further, county hospital property cannot be sold or disposed of without following the necessary requirements.<sup>42</sup>

K.S.A. § 19-211 does not address where the proceeds from a sale of county property must go. The county must convey property only if it is in the interests of the citizens of the county.<sup>43</sup> The county may allow the county hospital to retain the proceeds from the sale of county hospital property if this is in the interests of the citizens of the county.

[Back to top](#)

## CHAPTER 18 ENDNOTES

---

<sup>1</sup> K.S.A. § 19-311.

<sup>2</sup> Based on workshops and writings of Nicholas Saldan, Deputy County Counselor, Johnson County, KS

<sup>3</sup> *Aljian's Purchasing Handbook*, New York: McGraw-Hill Book Company, 1982, 4th Edition), p. 20-12.

<sup>4</sup> *The Model Procurement Code for State and Local Governments*, (1979), Sec. 3-201, Comment.

<sup>5</sup> *Case Bros. Co. v. City of Ottawa*, 226 Kan. 648, 602 P.2d 1316 (1979).

<sup>6</sup> McQuillin, *Municipal Corporations*, (3<sup>rd</sup> Edition) Sec. 29.28.

<sup>7</sup> *Williams v. City of Topeka*, 85 Kan. 857, 118 P. 864 (1911).

<sup>8</sup> McQuillin, *supra* at Sec. 29.29.

<sup>9</sup> *Ritchie Paving, Inc. v. City of Deerfield, Kansas*, 275 Kan. 631, 641, 67 P.3d 843 (2003).

<sup>10</sup> *The Model Procurement Code for State and Local Governments*, Sec. 3-202.

<sup>11</sup> *Lawborn v. Hutton*, 132 Kan. 226, 294 P.676 (1931).

<sup>12</sup> *Case v. Fowler*, 65 Ind. 29

<sup>13</sup> McQuillin, *supra* at Sec. 29.67.

<sup>14</sup> *Id.*, Sec. 29.82.

<sup>15</sup> *Sutter Bros. Const. Co. Inc. v. City of Leavenworth*, 238 Kan. 85, 708 P.2d 190 (1985).

<sup>16</sup> *Williams v. City of Topeka*, *supra*

<sup>17</sup> *Id.*

<sup>18</sup> McQuillin, *supra* at Sec. 29.77.

<sup>19</sup> The Council of State Governments, *State and Local Government Purchasing*, (1983, 3<sup>rd</sup> Edition).

<sup>20</sup> *The Model Procurement Code for State and Local Governments*, (1979) Sec. 3-203, Comment.

<sup>21</sup> *Id.*, Sec. 3-204.

<sup>22</sup> A.G. 2009-11.

<sup>23</sup> See also, A.G. 91-77, 88-45, 93-31; *Curtis Ambulance of Florida, Inc. v. Board of Cnty. Com'rs of Shawnee Cnty., Kan.*, 811 F.2d 1371 (1987).

<sup>24</sup> K.S.A. § 68-520.

<sup>25</sup> *Robertson v. Labette Cty. Comm'rs*, 124 Kan. 705, 709, 261 P. 831 (1927).

<sup>26</sup> A.G. 91-40.

<sup>27</sup> K.S.A. § 68-114.

<sup>28</sup> K.S.A. §§ 19-216a, 68-521.

<sup>29</sup> A.G. 92-118 (citing *Lucas v. Bowman*, 131 Kan. 589, 592 (1930)).

<sup>30</sup> A.G. 92-118.

<sup>31</sup> *Sutter Bros. Constr. Co. v. City of Leavenworth*, 238 Kan. 85, 88, 708 P.2d 190 (1985).

<sup>32</sup> K.S.A. § 12-1757 *et seq.*

<sup>33</sup> K.S.A. § 19-101.

<sup>34</sup> *Douglas Cty. v. City of Lawrence*, 102 Kan. 656, 659, 171 P. 610 (1918); *Cooper v. City of Great Bend*, 200 Kan. 590, 596, 438 P.2d 102 (1985).

<sup>35</sup> K.S.A. § 19-211(b).

<sup>36</sup> A.G. 92-110.

<sup>37</sup> K.S.A. § 19-4610.

<sup>38</sup> K.S.A. § 19-4624.

<sup>39</sup> K.S.A. § 19-4604.

<sup>40</sup> K.S.A. § 19-4611; A.G. 2000-30.

<sup>41</sup> A.G. 90-102.

<sup>42</sup> K.S.A. § 19-211.

<sup>43</sup> K.S.A. § 19-101.

## **CHAPTER 19: LAND USE AND ECONOMIC DEVELOPMENT**

### **ARTICLE 1: PLANNING AND ZONING**

#### **19.1.1 Introduction**

The planning, zoning, and subdivision laws for cities and counties can be found in K.S.A. § 12-741 *et seq.*, and K.S.A. § 19-2956 *et seq.* for Johnson County. Also, planning and zoning laws for improvement districts are found in K.S.A. § 19-2950 *et seq.*

[Back to top](#)

#### **19.1.2 Purpose**

Counties have authority to provide for the development of comprehensive plans, subdivision regulations, zoning regulations, and building set back lines.<sup>1</sup> The purpose of planning is to promote the public health, safety, and general welfare while conserving and protecting property values in the county. Planning also serves to ensure that public services and infrastructure are provided on a cost-effective basis. All counties can benefit from the orderly development of resources.

[Back to top](#)

#### **19.1.3 Planning Board**

The Board has the authority to create a planning commission for the county by resolution.<sup>2</sup> The number of people who sit on the planning commission is determined by the commissioners, but the commission cannot have fewer than five members.<sup>3</sup> The majority of the members of a county planning commission must live outside the incorporated limits of any city that is located within the county.<sup>4</sup> The Board can determine the term of service on the planning commission. The members of the planning commission may not receive compensation for serving on the commission.<sup>5</sup> The county commissioners may also establish rules and guidelines for the removal of members of the planning commission<sup>6</sup> and determine the planning commission's budget.<sup>7</sup>

[Back to top](#)

#### **19.1.4 Comprehensive Planning**

The county planning commission is responsible for adopting a comprehensive plan of development for the county.<sup>8</sup> The comprehensive plan should also include plans of the cities located in the counties if these plans are relevant to the county's comprehensive plan. Before a county can adopt a comprehensive plan that will affect an area located within three miles of the incorporated parts of a city, the county must give written notice to the city of their intended plan. If the county has not adopted the county unit road system and the county wants to adopt a comprehensive plan, the county must give notice to any affected townships.<sup>9</sup>

The county planning commission may adopt the comprehensive plan by a single resolution or by successive resolutions.<sup>10</sup> These resolutions should include any external maps, written

presentations, plats, or data that are part of the comprehensive plan. Before the planning commission can adopt or amend the comprehensive plan, they need to give notice by publication in the official county newspaper at least 20 days prior to the comprehensive plan meeting. The comprehensive plan is not effective until the Board has approved it. The planning commission must also review existing plans at least once a year.

The planning commission must complete comprehensive surveys and studies of past conditions and present conditions in order to show trends in land use, population, building intensity, public facilities, transportation and transportation facilities, economic conditions, natural resources, and other relevant trends. Planning commission members and county commissioners should have a thorough understanding of K.S.A. § 12-747—the statute that outlines the contents and procedures for a comprehensive plan.

[Back to top](#)

### **19.1.5 Zoning**

The Board may adopt zoning regulations by resolution according to the guidelines of K.S.A. § 12-753. The Board has the authority to divide the land within its jurisdiction into districts of different numbers, shapes, areas, classes, land uses, and building intensities in accordance with The Planning and Zoning Act. The regulations can include restrictions for height, number of stories, and size of buildings. The regulations can also determine the size of yards, courts, and other open spaces. The regulations can determine population density, land use, and appearance of building structures and what land can be used for residential, commercial, industrial and other purposes. Zoning regulations can also govern agricultural land in flood plains. This is only a partial list of the different zoning regulations.<sup>11</sup>

Before the county can establish zoning or district regulations that will affect the use of buildings or lands in the county, the county must get a recommendation from the planning commission. The planning commission must recommend the nature, use, numbers, and boundaries of the different districts. The planning commission must look at the necessity of these different districts. The planning commission must also recommend appropriate regulations and restrictions that are needed because of the changes in zoning. After the planning commission has made these recommendations, the commission must hold a public hearing on the recommendations. Notice to the public is required, via publication in the official county newspaper at least 20 days before the hearing. The planning commission must then send their recommendations back to the Board.

The Board has three options:

- (1) Approve the recommendations;
- (2) Override the recommendation by a two-thirds vote; or
- (3) Resubmit the recommendations to the planning commission for further consideration.<sup>12</sup>

In 2009, the Legislature altered the above process for mining operations.<sup>13</sup> The Board may override the planning commission's recommendation, or a protest petition, with a simple majority vote for zoning that relates to a mining operation. But the provision is non-uniform, so the Board can exempt itself from the bill's provision via a charter resolution.

[Back to top](#)

#### **19.1.6 Board of Zoning Appeals**

Any county that adopts zoning regulations is also required to create a board of zoning appeals.<sup>14</sup> The zoning appeals board must consist of three to seven members, appointed by the Board of County Commissioners. The board of zoning appeals hears and determines appeals and other matters referred to it regarding the application of the zoning regulation. In certain circumstances, the zoning appeals board has the power to grant variances and exceptions when a literal enforcement of the zoning regulations will result in an unnecessary hardship and the spirit of the regulations will not be harmed by relief being granted. Anyone who has been aggrieved by a decision of the zoning administrator can appeal to the board of zoning appeals. This includes any officer of the county, or any other governmental agency that has been adversely affected by the regulation. The planning commission can be the zoning board as well.

[Back to top](#)

#### **19.1.7 Zoning Within Three Miles of Cities**

K.S.A. § 12-754 authorizes cities to adopt and enforce zoning regulations within three miles of the city if that area is not already zoned by the county.

[Back to top](#)

#### **19.1.8 Joint Boards**

K.S.A. §§ 12-744(c) and 12-759 allow two or more cities and or counties to establish joint planning boards and joint boards of zoning appeals.

[Back to top](#)

### **ARTICLE 2: ANNEXATION**

#### **19.2.1 Annexation Authority and Public Policy**

Under Kansas law, incorporated cities are the only municipalities empowered to change their boundaries by annexation.<sup>15</sup> Annexation allows cities to plan and provide for the orderly growth and development of areas at the urban fringe and promotes the public interest by the efficient provision of services and facilities. Annexation is often controversial, and the Kansas legislature has taken steps in recent years to curb the ability of cities to annex.

The authority to annex is found at K.S.A. §§ 12-519 *et seq.* and 12-521. The Kansas annexation laws further a policy favoring the annexation of land from unincorporated areas that are, or are becoming, urbanized into functioning cities. The law also recognizes that landowners who do not request—or do not want—annexation have certain rights.

Conflicts are inherent to annexation; the private interest of individual landowners and the long-term interest of the entire community are not always compatible. Property owners located on the fringe of cities often oppose their forcible inclusion into the city. Most county Boards are well aware that the approval of annexations—whether by the city or the county—is often a politically unpopular decision. Frequently, however, the landowners have created the situation themselves by making residence and development decisions with the intent to obtain the benefits, services, and amenities of a city, but not the responsibilities.

While annexation must be fair and exercised responsibly, municipalities must prioritize the long-term public interest of the entire community when planning municipal growth. The community needs in our society occasionally require the sacrifice of some private goals and interests in order to achieve the greatest social utility.

[Back to top](#)

### **19.2.2 County Involvement with City Annexation**

Kansas law provides for:

- (1) Unilateral annexation by ordinance of the city, with or without consent of the landowner; and
- (2) Consensual annexation of land adjoining a city by petition of the landowner to the Board.

County Boards perform a role in all annexations. Generally the Board determines whether certain annexations should proceed and whether the city has lived up to the promises it made to landowners in conjunction with an annexation.

[Back to top](#)

### **19.2.3 City Unilateral Annexations**

Annexation by city-only action (whether or not the property owner consents) is permitted if the land to be annexed meets any one or more of the seven conditions specified at K.S.A. § 12-520(a)(1)-(7). These seven conditions are essentially legislative declarations of “urban” or “urbanizing” land that, by definition, should be part of the city upon the city’s initiative. Notice, publication, public hearing, and a service extension plan are required for all unilateral annexations except those of “[l]and owned by or held in trust for a city.”<sup>16</sup>

While the Board has no role in the annexation of land when a city acts unilaterally, it does determine whether the city has complied with its service extension plan. A finding of noncompliance can essentially invalidate the annexation through a de-annexation procedure. This review function of the Board is discussed in Section 19.2.6 below.

[Back to top](#)

#### **19.2.4 Bilateral Annexations**

When a city cannot, or chooses not to, annex unilaterally, it may petition the Board for approval to annex the land bilaterally under K.S.A. § 12-521. This procedure has changed from a legislative function of the county Board to a highly formal, quasi-judicial proceeding. The bilateral procedure generally operates as follows:

- (1) The city submits a petition to the Board of the county where the potentially annexed is located. The petition must include a legal description of the land and a request for a public hearing to discuss the advisability of the annexation.
- (2) The city must also file with the Board its plan for extension of services to the land proposed to be annexed. The requirements for the plan for extension of services are the same as when the city is unilaterally annexing without consent of the owner. The requirements are given in K.S.A. § 12-520b. The report must include:
  - a. A sketch of the affected area, including the existing streets and utility lines;
  - b. A detailed plan for extending services that gives a timetable for the provision of the service;
  - c. The estimated cost of each service; and
  - d. How the city proposes to address the cost.
- (3) The Board must set a public hearing date between 60-70 days following presentation of the petition. Notice of the hearing and a sketch of the land involved must be published in newspaper of general circulation and the notice and sketch sent by certified mail to owners of the land proposed to be annexed.
- (4) The Board's public hearing is quasi-judicial in nature because the Board must consider the impact of the annexation in relation to the entire community. The Board must prepare written facts and conclusions whether the annexation will injure the landowners—either through annexation or choosing not to annex the land. There are 14 factors for the Board to consider in its finding.<sup>17</sup>
- (5) Within seven days after adjournment of the hearing, the Board, by two-thirds vote, must either:
  - a. Approve by order all or part of the annexation. This authorizes the city's annexation of the land by ordinance; or
  - b. Deny the annexation by passage of a resolution, which must be sent to the city by certified mail.
- (6) Decisions of the Board may be appealed to the district court by either the city or a landowner, as provided in K.S.A. § 19-223.<sup>18</sup>
- (7) Within ten days of the Board's approval of an annexation involving 40 or more acres, the city clerk must certify to the county election officer a legal description and a map of the

area outside the corporate limits of the city proposed to be annexed and the addresses of all qualified electors as defined in K.S.A. § 12–519 located within the area.<sup>19</sup>

- (8) Within 60 days of receiving the city clerk’s certification, the county election officer must conduct a mail ballot election, pursuant to K.S.A. § 25-431 *et seq.* and a majority of the qualified electors must approve the annexation.<sup>20</sup>

[Back to top](#)

#### **19.2.5 “Island” Annexations**

Until 2010, there were three methods of annexing land. The third method, often called strip annexation, was in K.S.A. § 12-520c, and was used by a city to annex a narrow piece of land. The Legislature added language to K.S.A. § 12-520 to eliminate this type of annexation: “no city may utilize any provision of this section to annex a narrow corridor of land to gain access to noncontiguous tracts of land.”<sup>21</sup>

[Back to top](#)

#### **19.2.6 County Board Hearings on Service Extension Plans**

County commissioners are responsible for ensuring cities keep the obligations listed in their service extension plans. Three years after an annexation, the Board must call a public hearing to determine whether the city has provided municipal services in the service extension plan to the annexed area.<sup>22</sup> The hearing must take place for annexations under the unilateral<sup>23</sup> or the bilateral<sup>24</sup> procedures. If the Board finds the city has not provided services as set out in its plan, it notifies the city and the landowner that the property may be de-annexed if the city fails to provide services within one and a half years of the date of the Board’s finding.

[Back to top](#)

#### **19.2.7 De-annexation**

The Board’s finding that a city has not followed its service extension plan carries great significance because the legislature has empowered county commissioners to de-annex land from the city, subject to certain conditions.<sup>25</sup> If the Board: (1) finds noncompliance with the plan at the three-year review (see 19.2.6 above); (2) provides notice to the city; and (3) the city fails to provide the services as promised within the one and a half year period after the finding, then the county may order de-annexation of the land at the request of the property owner.<sup>26</sup> De-annexation, or exclusion, cannot be ordered where it would result in an “island” surrounded by incorporated land, or where failure to provide services is not due to action (or inaction) by the city.<sup>27</sup> De-annexation has consequences for the general tax liability of the excluded property, but does not remove liability for special assessment levies.<sup>28</sup>

[Back to top](#)

#### **19.2.8 Planning Commission Review of Annexations**

A city must submit its resolution of intent to annex to any planning commissions with jurisdiction over the area proposed to be annexed. This encompasses city, county, township, or joint planning commissions. For annexations commenced under K.S.A. § 12-521, the



commission must report its findings to the Board on whether the proposed annexation is compatible with any adopted land use or comprehensive plans applicable to the area to be annexed and the annexing city. The planning commission's finding is advisory only and does not limit the Board's hearing and findings on the proposed annexation.

[Back to top](#)

## **ARTICLE 3: SUBDIVISION REGULATIONS**

Subdivision regulations—a set of standards that establishes the way municipalities divide and develop land—are an important planning and development tool.<sup>29</sup> The sub regulations help ensure that developments factor in public improvements and governmental services.

[Back to top](#)

### **19.3.1 Nature of Subdivision Regulations**

Subdivision regulations may provide for the location of streets, minimum lot sizes, construction standards, open spaces, building setbacks, utilities, and floodplain controls.

[Back to top](#)

### **19.3.2 Purpose of Subdivision Regulations**

Public services such as fire, law enforcement, refuse, ambulance, sewer, and water service must expand as private developments expand. In the interest of efficient and economical expansion, the review of subdivision development is very useful. Subdivision regulations are valuable in rural areas because residential and commercial development will create urban-type service needs, expectations, and problems.

[Back to top](#)

### **19.3.3 Legal Authority for County Subdivision Regulations**

K.S.A. § 12-749 provides the statutory authority for counties to adopt subdivision regulations. Subdivision regulations must be approved by the planning commission and by at least a majority of the Board . Subdivision regulations may cover all or a portion of the unincorporated area of the county. They may also regulate incorporated areas of any city if there is joint approval by both the city and county planning commission, and a joint planning commission is set up to regulate the area. Subdivision regulations can only be adopted, changed, or amended after published notice and a public hearing. Cities may adopt subdivision regulations governing unincorporated territory within three miles of the city.

Cities and counties can establish joint planning commissions for subdivision regulation.<sup>30</sup> As with many other county-city issues, cooperation between the county and city through the use of joint boards and commissions is the prudent way to plan for the entire community.

[Back to top](#)

### **19.3.4 Procedure**

All applicants/developers must submit a proposed plat to the county planning commission or the joint committee for subdivision regulation.<sup>31</sup> The planning commission will decide if the proposed plat conforms to the subdivision regulations. If the proposal is approved or not acted upon within 60 days, the secretary of the county planning commission or the joint planning commission must issue an approval certificate. The register of deeds cannot file any plat for land located within any area governed by subdivision regulations until the plat has an approval certificate.

[Back to top](#)

## **ARTICLE 4: REGULATORY CODES**

### **19.4.1 Adoption of Codes**

A county may enact a code enforcement program using home rule power to help ensure a safe and healthy environment. Some counties in Kansas have adopted nationally recognized regulatory codes to regulate buildings, fire, housing, electrical work, and plumbing. National organizations publish these codes in book or pamphlet form, and the county may incorporate all or a portion of the document—called “adoption by reference.” The county may adopt the entire model code or select the provisions of the model code that it finds appropriate.<sup>32</sup> But a county is prohibited from requiring compliance with county-adopted building or construction codes when the building being constructed will be used solely for agricultural purposes.<sup>33</sup> The county can, however, require the landowner to obtain a determination of whether the construction qualifies for the agricultural exemption prior to beginning construction.<sup>34</sup> Development, adoption, and enforcement of these codes can be done in cooperation and coordination with cities in the county. Note the following examples:

- (1) The National Building Code set standards for occupancy, types of construction, structural design, fire protection, electrical wiring, and other building elements with the purpose of ensuring safe and structurally sound buildings for present and future community members.
- (2) For the purpose of promoting public health and well-being, the Board may adopt a sanitary code by resolution to apply to parts of the county as they deem necessary.<sup>35</sup>
- (3) Some counties have established an environmental court to deal with day-to-day violations, resolutions, and regulations.<sup>36</sup>

[Back to top](#)

## **ARTICLE 5: SPECIAL PURPOSE DISTRICTS**

### **19.5.1 Creation of Special Units**

A special purpose government exists for a specific, singular purpose and is a separate governmental unit from a general purpose government like a county or city. According to a 2012 survey of governments by the U.S. Bureau of the Census, Kansas had over 1,800 special

purpose governments. In most instances special purpose districts such as those for sewers, water supply, fire, and drainage are created by action of the Board, whether by petition of affected landowners or at the county commission's own initiative.

[Back to top](#)

### **19.5.2 Impact of Operation of Special Units**

Special purpose units of government are of value to members of the public who lack a cost-effective method for providing a particular governmental service. But using limited purpose governments for services that could be supplied by an already existing general purpose local government could be inefficient.

Unnecessary reliance upon special purpose government can create long-term costs and lead to a fragmented service-delivery system. As land becomes more urban in nature, the infrastructure created by special units may be inadequate to provide for the growing development the special unit helped promote. When sewer lines, water lines, and other public improvements are abandoned because of substandard or insufficient capacity, public monies may have to be spent by a general-purpose unit of government to provide these services.

Kansas recognizes that limited purpose governments should not be a substitute for existing general-purpose governments. Kansas law requires Boards to evaluate fiscal, economic development, and other impacts of special units before creating or expanding them.<sup>37</sup> The law requires the Board to approve by a three-fourths vote the creation or expansion of boundaries of any special benefit district located within three miles of any city that has adopted subdivision regulations.<sup>38</sup> Those benefit districts include: sewer districts; water, rural water and water supply districts; fire districts; improvement districts; industrial districts; and drainage districts.<sup>39</sup>

[Back to top](#)

## **ARTICLE 6: ECONOMIC DEVELOPMENT**

### **19.6.1 Economic Development**

The Board may use resolutions to establish a countywide economic development program.<sup>40</sup> Some counties have joined with other counties and cities to create regional or city-county development agencies. Kansas courts and the Attorney General have found that, for the purpose economic development, counties may: (1) exercise the powers of eminent domain<sup>41</sup>; (2) acquire and develop real property as an industrial site or park<sup>42</sup>; (3) issue general obligation bonds under home rule authority to fund a pool from which loans, grants, and other economic development incentives would be made available to eligible businesses<sup>43</sup>; (4) grant economic development moneys to local radio stations (since this is not prohibited by the First Amendment if it further a proper public purpose)<sup>44</sup>; and (5) rescind a resolution authorizing corporate swine production<sup>45</sup>.

[Back to top](#)

### **19.6.2 Economic Development Tax Exemptions**

There are two separate mechanisms for counties to provide property tax exemptions to qualifying local businesses. The first is in the Kansas Constitution, Article 11, Section 13. Counties must consider the constitutional definitions before entering into agreements with a private business. The exemptions are limited, and the Kansas Supreme Court has held they are to be narrowly construed.<sup>46</sup>

The constitution includes the minimum list of exemptions, but it is not exclusive. The Kansas Supreme Court has held the legislature may make additional exemptions.<sup>47</sup> Those statutory exemptions are listed in K.S.A. § 79-201 *et seq.* Kansas law forbids a local exemption for poultry, swine, and rabbit production facilities, although the Kansas legislature can exercise such an exemption.<sup>48</sup>

[Back to top](#)

### **19.6.3 Neighborhood Revitalization**

Another economic development tool is the use of the Neighborhood Revitalization Program.<sup>49</sup> It is a discretionary program for the rebate of a defined increment of property tax to a business or property owner. It requires specific procedures and findings prior to adoption and implementation.

[Back to top](#)

### **19.6.4 Enterprise Zones**

Counties may establish enterprise zones for economic development purposes.<sup>50</sup> Businesses located within an enterprise zone may be eligible for certain state tax exemptions and other preferences. Information on establishing enterprise zones is available from the Kansas Department of Revenue: <https://www.ksrevenue.org/prtaxcredits-busjob.html#entzoneind>.

[Back to top](#)

## CHAPTER 19 ENDNOTES

---

<sup>1</sup> K.S.A. § 12-743.

<sup>2</sup> K.S.A. § 12-744(a); A.G. 2001-24.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> K.S.A. § 12-744(b).

<sup>6</sup> K.S.A. § 12-744; A.G. 2001-24.

<sup>7</sup> K.S.A. § 12-746.

<sup>8</sup> K.S.A. § 12-747; A.G. 2001-24.

<sup>9</sup> K.S.A. § 12-743(b).

<sup>10</sup> K.S.A. § 12-747(b).

<sup>11</sup> K.S.A. §§ 12-753, 12-754, 12-755, 12-756, 12-757, 12-758.

<sup>12</sup> K.S.A. § 12-756(b).

<sup>13</sup> K.S.A. § 12-757(g).

<sup>14</sup> K.S.A. § 12-759.

<sup>15</sup> K.S.A. § 12-517 *et seq.*

<sup>16</sup> K.S.A. § 12-520a(f).

<sup>17</sup> K.S.A. § 12-520a(c).

<sup>18</sup> *Umbehr v. Waubensee County Comm'rs*, 252 Kan. 30, 843 P.2d 176 (1992); *Kaplan v. Johnson County Comm'rs*, 269 Kan. 122, 3 P.3d 1270 (2000).

<sup>19</sup> K.S.A. § 12-521(e).

<sup>20</sup> K.S.A. § 12-521(e).

<sup>21</sup> K.S.A. § 12-520(g).

<sup>22</sup> K.S.A. § 12-531.

<sup>23</sup> K.S.A. § 12-520(a).

<sup>24</sup> K.S.A. § 12-521.

<sup>25</sup> K.S.A. §§ 12-531, 12-532.

<sup>26</sup> K.S.A. § 12-532.

<sup>27</sup> K.S.A. § 12-532(e).

<sup>28</sup> *Id.*

<sup>29</sup> K.S.A. § 12-749.

<sup>30</sup> K.S.A. § 12-750.

<sup>31</sup> K.S.A. § 12-752.

<sup>32</sup> K.S.A. § 12-3301 *et seq.*

<sup>33</sup> K.S.A. § 19-2921.

<sup>34</sup> A.G. 2016-10.

<sup>35</sup> K.S.A. § 19-3701 *et seq.*

<sup>36</sup> K.S.A. § 19-101d.

<sup>37</sup> K.S.A. § 19-270.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> K.S.A. § 19-4101 *et seq.*

<sup>41</sup> *General Building Contractors, LLC v. Board of Shawnee County Comm'rs*, 275 Kan. 525, 66 P.3d 873 (2003).

<sup>42</sup> A.G. 85-52.

<sup>43</sup> A.G. 91-144.

<sup>44</sup> A.G. 91-89.

<sup>45</sup> A.G. 97-72.

<sup>46</sup> *See Famous Brands Distrib., Inc. v. Board of Shawnee County Comm'rs*, 21 Kan. App. 2d 67, 894 P.2d 925 (1995).

<sup>47</sup> *Gunkle v. Killingsworth*, 118 Kan. 154, 156, 233 P. 803 (1925); *Woman's Club of Topeka v. Shawnee County*, 253 Kan. 175, 187, 853 P.2d 1157 (1993).

<sup>48</sup> K.S.A. § 79-250.

---

<sup>49</sup> K.S.A. § 12-17,114 *et seq.*

<sup>50</sup> K.S.A. § 74-50,113 *et seq.*

## **CHAPTER 20: COUNTY OFFICES AND OFFICIALS**

### **ARTICLE 1: INTRODUCTION**

#### **20.1.1 County Office Defined**

A public office is a position whose occupant has legal authority to exercise a government's sovereign powers for a fixed time.<sup>1</sup> The Kansas Supreme Court provided the following description:

Essential characteristics of a 'public office' are (1) authority conferred by law, (2) fixed tenure of office, and (3) power to exercise some portion of sovereign functions of government; a key element of such test is that 'officer' is carrying out sovereign function. The essential elements to establish public position as 'public office' are: position must be created by constitution, legislature, or through authority conferred by legislature, portion of sovereign power of government must be delegated to position, duties and powers must be defined, directly or impliedly, by legislature or through legislative authority, duties must be performed independently without control of superior power other than law, and position must have some permanency and continuity.<sup>2</sup>

[Back to top](#)

#### **20.1.2 County Officer Defined**

K.S.A. § 75-4301a defines a local government officer as “any elected or appointed officer of any governmental subdivision or any of its agencies.” Webster’s Dictionary defines an officer as “one who holds an office of trust, authority, or command.” Generally, a public officer is a position created by statute or resolution that involves tenure, continuity, and imposition of duties. Public officers help make, execute, interpret, and administer the law.

Officers can be elected or appointed officials. If the position carries an officially vested right to exercise any power of the governmental unit and the person does not work under the supervision of another, the person is considered an officer.

[Back to top](#)

### **ARTICLE 2: AUTHORITY OF THE BOARD OF COUNTY COMMISSIONERS**

#### **20.2.1 Authority Over Personnel**

Officers have the distinction of responsibility to the voters for results, along with the power of direction, supervision, and control.<sup>3</sup> Individuals who do not hold each of these responsibilities and powers are employees, subordinate to the legal authority of another.<sup>4</sup> Officers of the county are not employees of the county. They are subject to different rules of law than public employees when it comes to personal liability, tenure, personnel decisions, and the right to

compensation, whereas elected officials statutorily must perform certain administrative and managerial responsibilities.<sup>5</sup>

In order to meet their responsibilities as elected officers, county clerks, treasurers, sheriffs, registers of deeds, and county attorneys must have power and authority over their employees when it comes to many personnel decisions. Kansas law specifically empowers officers to employ deputies and assistants as “appointed officers.”<sup>6</sup> County officers have broad powers over the hiring, firing, promotion, and salaries of their employees.

Because elected officers have these broad powers, there is often tension between officers and county commissioners. Until 1983, this conflict was worse because officers’ budgets were not under the supervision of the Board. During the 1983 session, the Legislature added language to “clarify the powers of various elected county officials and to promote more harmony in the courthouse.”<sup>7</sup>

The following law now applies to county clerks,<sup>8</sup> treasurers,<sup>9</sup> registers of deeds,<sup>10</sup> and sheriffs:<sup>11</sup> For each respective office, personnel action taken by the officer is subject to:

- (1) Personnel policies and procedures established by the Board of County Commissioners for all county employees other than elected officials;
- (2) Any pay plan established by the Board of County Commissioners for all county employees other than elected officials;
- (3) Any applicable collective bargaining agreements or civil service system; and
- (4) The budget for the financing of the operation of the (officer’s) office as approved by the Board of County Commissioners.

The statutes governing sheriffs are particularly complicated in regard to budgetary and personnel matters. Over the years the Attorney General’s office has issued numerous opinions trying to reconcile control issues between the sheriff and the county commissioners. More recently the Kansas Supreme Court has commented on the authority of the commissioners and sheriff for personnel and budgetary decisions in *Board of County Commissioners of Lincoln County v. Nielander*.<sup>12</sup>

The commission’s job description from Kansas statutes are as follows:

- Pass legislation in response to local needs through home rule authority;
- Approve budget and oversee county finances;
- Appoint and direct county officers/staff in offices not under another elected official;
- Adopt personnel policies and pay plans for all county employees;
- Provide for adequate county government facilities;
- Establish and maintain county roads;
- Execute contracts for protection of public health and welfare;



- Apportion and order tax levies;
- Determine township boundaries; and
- Make citizen appointments to county boards.

[Back to top](#)

### **20.2.2 County Personnel Policies**

The adoption of county personnel policies and pay plans for employees—including deputies and assistants—is a matter of county business, and the Board can enact legislative and administrative standards and directives governing the county’s personnel policies.<sup>13</sup>

So, while the Board cannot enact personnel policies that apply to the other elected officers, the Board can enact personnel policies that apply to the employees of the elected officers. The exception is the county attorney or district attorney, which the Legislature did not make subject to the personnel policies, procedures, and pay plans established by the Board of County Commissioners. With that in mind, all employees and elected officials are ultimately subject to budget constraints. If funds are available in the budget for the purpose of hiring employees, and if county personnel policies do not apply or exist, the Board of County Commissioners cannot interfere with personnel decisions made by another elected official. A close examination of Attorney General’s opinions and statutes underscores the importance for the Board of County Commissioners to establish personnel policies and procedures.

As a practical matter, any Board should heavily involve the other elected officers in creating and updating personnel policies to ensure ownership over the way the counties operate.

[Back to top](#)

### **20.2.3 Salaries of County Officers and Employees**

Unless forbidden or restrained by law, the salary or compensation of an officer or public employee may be changed from time-to-time, including decreases, during the continuance of the term or period of employment.<sup>14</sup>

The Attorney General cited the Kansas Supreme Court when suggesting that the Board Commissioners could reduce the salary of county officers:

Public offices in the state are mere agencies for the benefit of the people – not contracts on their part with the officeholder for his benefit. Therefore, there is no contract, express or implied, between a public officer and the state or county whose agent he is. Officeholders have no agreement or contract that they shall receive any particular compensation for the term they hold office. Their terms are fixed with the view to public utility and convenience, and not for the purpose of granting the emoluments of salary during any fixed period to the officeholder. The legislature may exercise its control by increasing or diminishing the salary or emoluments of an office. . .<sup>15</sup>

The Board must, however, act reasonably and consider factors like the availability of funds and the degree of public need for certain governmental services. If the Board acts arbitrarily and unreasonably in establishing the budget of an elected officer, without giving adequate regard to the officer's duties and responsibilities, the court could issue a mandamus that the Board reconsider the budgetary decision.<sup>16</sup>

The Board may not offset the County Treasurer's salary based on compensation from the Motor Vehicle Fund.<sup>17</sup> The motor vehicle fund is a special fund solely within the authority of the County Treasurer, and it defrays the cost of the treasurer serving as the processor while collecting motor vehicle fees on the state's behalf.<sup>18</sup> Compensation for the County Treasurer from the Motor Vehicle Fund is based on the number of annual qualifying vehicle transactions and is capped at a maximum of \$15,000.<sup>19</sup> The county would have to perform over 250,000 qualified transactions to reach this maximum amount.

[Back to top](#)

#### **20.2.4 County Expenditures**

As a general rule, the Board has the authority and responsibility for overseeing the expenditure of county funds.<sup>20</sup> Kansas statutes, court decisions, and Attorney General Opinions suggest there is little outside the scope of the county commission's power regarding financial matters of the county.<sup>21</sup> But this power is not absolute.<sup>22</sup> The 2009 case cited above, *Weber v. Board of County Commissioners of Marshall County*, prohibits the county commission from exercising any control over the County Treasurer's motor vehicle fund. Likewise, the Register of Deeds has a special fund, the technology fund, which falls under the authority of the Register of Deeds and not the Board.

Another exception exists when the expenditure or obligation is necessary for an elected official to carry out the position's statutorily imposed responsibilities.<sup>23</sup> Therefore, while the commission's general authority over county expenditures prevails in the area of discretionary expenditures, circumstances may exist where the general rule must give way to competing statutory provisions that govern the expenditure of county funds.

[Back to top](#)

### **ARTICLE 3: COUNTY OFFICES AND OFFICERS**

#### **20.3.1 General**

Typically, Kansas statutes create county officer positions and services, though counties have broad creative authority under home rule authority.<sup>24</sup> This chapter focuses on the statutory duties of elected and appointed officers. See Chapter 2 for the required qualifications of candidates for public office and persons elected to fill vacancies.

[Back to top](#)

### 20.3.2 County Clerk

The county clerk must serve as secretary to the Board.<sup>25</sup> This duty may be performed personally or by a designated staff member.<sup>26</sup> The clerk or designee must:

- (1) Take minutes of all meetings;<sup>27</sup>
- (2) Sign and issue all orders approved by the Board of County Commissioners;<sup>28</sup>
- (3) Keep a record of all orders and contracts that create a liability against all funds; and<sup>29</sup>
- (4) Be a notary public.<sup>30</sup>

The county clerk has the authority to administer oaths, take acknowledgements for fees, mortgages, and other legal instruments, and attest them with the county seal.<sup>31</sup> The county clerk, except in Johnson, Sedgwick, Shawnee, and Wyandotte counties, serves as the county election officer and is in charge of all elections. (See Chapter 16, Article 9, Canvassing Elections).

The county clerk is the chief accounting officer for the county. The law requires the county clerk to keep certain duplicate ledger accounts for all taxing units.<sup>32</sup> The clerk must prepare vouchers and keep a record of bonds and emergency warrants issued by the county, township, and school districts.<sup>33</sup> The position requires keeping a record of all special assessments for paving, sewer, and water districts.<sup>34</sup> The county clerk processes all tax exempt gasoline applications.<sup>35</sup> Clerks also oversee the sale of fish and game licenses and may appoint bonded agents to assist with this task.<sup>36</sup> The clerk must keep records of all real estate transfers, review budgets of all governmental units, set tax levies, compute the tax, and certify the tax roll to the county treasurer for collection.<sup>37</sup> Miscellaneous duties of the county clerk include recording all bonds and insurance policies, maintaining the inventories for all county officials, and issuing various licenses and permits.<sup>38</sup> For more information on county clerks, visit their association page at: [www.kcceoa.org](http://www.kcceoa.org).

[Back to top](#)

### 20.3.3 Deputy County Clerks

Deputy county clerks are also important to the daily business at the courthouse. The county clerk is required by law to appoint a deputy to serve in their place in case of their absence.

K.S.A. § 19-302(a) reads:

The county clerk shall appoint a deputy county clerk and file a written statement of the appointment in the clerk's office. In the absence or disability of the county clerk or if a vacancy in the office occurs the deputy county clerk shall perform all the duties of the county clerk during the clerk's absence or until the vacancy is filled. In addition to the deputy, the county clerk also may appoint, promote, demote and dismiss additional deputies and any assistants necessary to carry out the duties of the office.

[Back to top](#)

### 20.3.4 County Appraiser

The county appraiser—sometimes called the assessor—assesses property for tax purposes. Each county or appraisal district (composes of more than one count) must appoint a county appraiser for a four year term.<sup>39</sup> The county may only appoint individuals with at least three years of mass appraisal experience and certification by the Director of Property Valuation as an eligible Kansas appraiser under the provisions of the act.<sup>40</sup> Starting July 1, 2022, all appraisal courses necessary to qualify for the designation of a registered mass appraiser and all continuing education appraisal courses necessary to retain such designation shall be courses approved by the Kansas real estate appraisal board.

The appraiser must send notice to each taxpayer by March 1 stating the assessed value of his or her property.<sup>41</sup> It is the duty of the county appraiser to prepare the assessment roll and certify such roll to the county.<sup>42</sup>

Note that county appraisers are wholly independent—but related—to real estate appraisers. Unlike the county appraiser in K.S.A. § 19-430, real estate appraisers provide written statements that private entities use in connection with real estate transactions. The real estate appraisers factor into the market value of property, but this is much different from the duties of a county appraiser.

The Division of Property Valuation (PVD) in the Kansas Department of Revenue is a key resource for additional information. PVD provided the following dates for counties and county appraisers to supplement the calendar of key dates (effective January 2017) at <https://www.ksrevenue.org/pvdproptaxcal.html>:

#### Real Property Deadlines

<u>Last day for:</u>	<u>Date</u>	<u>K.S.A.</u>
County to mail valuation notices	March 1	§79-1460
Public utility companies to file property rendition	March 20	§79-5a02
Taxpayers to file equalization appeal (30 days from date county mailed notice)	30 days	§ 79-1448
Informal meeting with county appraiser	May 15	§ 79-1448
County appraiser to provide final determination	May 20	§ 79-1448
Taxpayer to file with board of tax appeals (30 days from date of informal decision)	Date varies	§ 79-1606
<b>OR</b> taxpayer to file single property appraisal with county appraiser (60 days from date county mailed notice)	60 days	§ 79-1496
County appraiser to review/consider/send supplemental determination of value	15 days	§ 79-1496
County appraiser to provide single property appraisal/ determination of value	90 days	§ 79-1496
Taxpayer to file with board of tax appeals		

(30 days from date of final determination of value)	30 days	§ 79-1496
County appraiser to certify values to county clerk	June 1	§ 79-1466
PVD to certify public utility values to county clerk	June 1	§ 79-5a27
County clerk certifies abstract of value to director of property valuation	July 15	§ 79-1604

### **Personal Property Deadlines**

<u>Last Day for:</u>	<u>Date</u>	<u>K.S.A.</u>
Taxpayers to file personal property rendition	March 15	§ 79-306
Taxpayers to file oil and gas property rendition	April 1	§ 79-332a
County to mail valuation notices	May 1	§ 79-1460
Taxpayers to file equalization appeal	May 15	§ 79-1448
Informal meeting with county appraiser	Date varies	§ 79-1448
County appraiser to provide final determination	Date varies	§ 79-1448
County appraiser to certify values to county clerk	June 1	§ 79-1467
Hearing officer/panel to hold hearings	July 1	§ 79-1606
Hearing officer/panel to issue order/decision	July 5	§ 79-1606
Taxpayer to file with board of tax appeals (30 days from date of informal decision)	Date varies	§ 79-1609
County clerk certifies abstract of value to director of property valuation	July 15	§ 79-1604

### **Budget, Levy, and Tax Deadlines**

<u>Last Day for:</u>	<u>Date</u>	<u>K.S.A.</u>
County clerk to notify taxing districts of value for budget	June 15	§ 79-5a27
City/county to certify to county clerk/election officer the need for election budget increase using mail ballot to be held on September 15	July 1	§ 25-433a
Governing bodies certify budget to county clerk (except if city/county election)	August 25	§ 79-1801
If governing body is exceeding revenue neutral rate, public Hearing must be conducted	August 20 Through September 20	§ 79-2988
Governing body passes resolution to exceed RNR (if applicable)	August 20 Through September 20	§ 79-2988
At regularly scheduled election	August or Nov	§ 79-2925c
Mail ballot election	September 15	§ 79-2925c
Special election called by city/county	Date varies	§ 79-2925c

City/county certify budget to county clerk if election held to increase budget	October 1	§ 79-1801
County clerk certifies tax roll to county treasurer	November 1	§ 79-1803
County clerk certifies abstract of value, levy, and tax to director of property valuation	November 15	§ 79-1806
Tax Statements sent by county treasurer	December 15	§ 79-2001
Tax Payments Due – full or first half	December 20	§ 79-2004; § 79-2004a
Tax payment due – second half	May 10 of the following year	§ 79-2004 § 79-2004a

For more information on the county appraiser duties, visit: [www.kscaa.net/](http://www.kscaa.net/).

[Back to top](#)

### **20.3.5 Re-appointment/Termination of the County Appraiser**

The county appraiser really serves two masters—the Kansas Department of Revenue Division of Property Valuation and the county commission.<sup>43</sup> K.S.A. § 19-431 provides for the termination of an appraiser for failing or neglecting the duties of the office, incompetence, or other cause.<sup>44</sup> It also requires the Board to enter an order stating its grounds for termination. The commission can appoint a temporary appraiser in the interim, but the person only serves until the Property Valuation Division has reviewed the termination.

The director of the PVD reviews the termination if requested by the appraiser. This review is not for the purpose of determining if there is evidence supporting the commission’s decision; the review is to determine whether there are sufficient grounds to support termination.

Also, the PVD director can independently remove a county appraiser. The appraiser can protest by asking the Board of Tax Appeals (BOTA) to review the termination. The county commission has no appeal rights.

Equally important, K.S.A. § 19-432 gives the PVD control over whom the Board hires to replace the county appraiser. In fact, the PVD prohibits hiring anyone who is not on their approved list. A county may, however, hire the person subject to passing the PVD exam and the real estate exam as required by law. If the county proceeds in that manner, the new employee cannot be called “county appraiser” in the interim. The person must go by the title “administrator” of the appraiser’s office until the PVD certifies the person for appointment.

[Back to top](#)

### **20.3.6 County Treasurer**

The county treasurer has the general responsibility for handling the receipts and expenditures of county funds.<sup>45</sup> In October of each year, the county treasurer must provide a review of the receipt and expenditure records and settle accounts with the Board.<sup>46</sup> There is more information on the treasurer's payment power in K.S.A. § 19-509. The treasurer must also prepare reports and statements for the county and its political subdivisions.<sup>47</sup>

Another responsibility of the county treasurer (or, as of 2017, the division of vehicles or a contractor of the division) is oversight of vehicle registrations.<sup>48</sup> Because the treasurer collects vehicle funds for the state, a portion of the registration receipts goes to a special account to cover expenses involved in administering the motor vehicle functions. Any unused balances in the fund at the end of the fiscal period transfer to the county general fund. Until the remainders of this special fund are delegated to the county at the end of the year, the treasurer has control of this special fund, and the Board cannot authorize or oversee any payments from the fund.<sup>49</sup> The breakdown over funding responsibility between the state and counties for these functions is often confusing. To help understand this shared responsibility, the Kansas Department of Revenue provided the following analysis. Keep in mind the following information was current through 2016 but may be changed at any time. For current information, contact KDOR.

### **Motor Vehicle Fee Breakdown**

#### **Non-Commercial Vehicles**

- \$2 of each title application processed;
- \$.75 for each license plate application (includes registration renewal and new vehicle registration);
- \$.75 of each transfer of license plate application;
- \$5.00 county service fee for registration renewal;
- \$1.50 for each lien release attached to a title application;
- \$.50 of each Wildlife and Park Permit sold;
- Optional county facility fee of \$5 for county with multiple service locations;
- Optional county facility fee of \$2.50 to \$5.00 for counties with only one location; and
- Personal property taxes.

#### **Intra-State Kansas Based Commercial Motor Vehicles**

- All of the above;
- \$2 administrative fee for each vehicle registered in the county, plus fees collected by any registrations completed at KDOR central office;
- Commercial motor vehicle fee based on age and weight of vehicle is remitted to the state and then distributed back to the county to replace ad valorem tax. This fee was established to replace ad valorem tax previously collected on these vehicles. Funds are to be remitted to the county taxing units who would have received ad valorem tax

distributions. Some of the larger counties retain their portion of CMV fee and only remit the remainder to the state. Distribution is settled monthly; and

- Fees for non-Kansas based commercial vehicles are deposited to the State General Fund.

With the exception of commercial motor vehicle fees and personal property tax, all county fees are deposited in the Motor Vehicle Operating Fund to be used for the administration and operation of county motor vehicle offices. In addition, the county treasurer may retain extra compensation based upon the number of transactions processed per year, pursuant to K.S.A. § 8-145(b).

**The Division of Vehicles provides** at no charge to the county treasurer:

- All license plates;
- All registration decals;
- All county situs decals;
- All miscellaneous decals;
- The state prints all titles; and
- The state prints and mails all registration renewal notices unless the county opts to print and send their own.

In addition, the state has provided all PC hardware, including scanners, signature pads, and printers. The counties could choose to opt out of state supplied hardware if they desired. The state has completed a one-time refresh of some of the hardware. At this time, we have no plans to complete a total refresh, but will work with counties to replace equipment that no longer works.

**Counties pay for:**

- Toner for registration decal printers;
- Staffing and operating expenses for motor vehicle offices within the county;
- Postage for mailing decals and plates to customers who renew on-line or via regular mail; and
- Postage for mailing notices to lienholders.

The treasurer collects and distributes taxes and other revenues from other taxing units. Some treasurers handle the investment of county funds.

The Motor Vehicle Fee Breakdown is a summary by the Kansas Department of Revenue. Deb Wiley, the Manager of Vehicle Administrative Support for the Division of Vehicles, is available for additional information at: 785-296-3341 or [Debra.Wiley@ks.gov](mailto:Debra.Wiley@ks.gov).

[Back to top](#)

### **20.3.7 Deputy/Assistant County Treasurer**



County treasurers are not required to hire assistants or deputies. K.S.A. § 19-503 states:

The county treasurer may appoint a deputy, who, in the absence of the treasurer, or in case of a vacancy in the office, due to any disability of the treasurer to perform the duties of the office, may perform duties of the office of treasurer until the vacancy is filled or the disability removed. In addition to the deputy, the county treasurer also may appoint, promote, demote and dismiss additional deputies and any assistants necessary to carry out the duties of the office.

If, however, a treasurer does have deputies or assistants, then there is authority to supervise the work product of the employees.<sup>50</sup> The county treasurer can also require these assistants to attend any seminars and meetings that are beneficial to the office.

[Back to top](#)

### **20.3.8 Register of Deeds**

The register of deeds is required to record and keep custody of deeds, mortgages, maps, instruments, and writings as specified by law.<sup>51</sup> Also, the register of deeds must maintain a book of plats.<sup>52</sup> The Board may order the register of deeds to provide certain records for the use of the county including a numerical index as defined in K.S.A. § 19-1209.

Like the treasurers, the registers of deeds have a special fund called the "Technology Fund."<sup>53</sup> Given the similar nature between the two funds, the *Weber* case suggests that the Technology Fund is within the exclusive control of the register of deeds, thus barring the Board from exercising authority over fund expenditures. A recent Attorney General opinion addressed the issue of whether the register of deeds can use the Technology Fund to pay for salaries of its employees.<sup>54</sup> A.G. 2010-14 noted that the intent for the fund is acquiring equipment and technology for maintaining records, and salaries may be an appropriate expenditure under this statute when staff activities relate the tasks outlined in the statute.

Another fund unique to the register of deeds is the Heritage Trust Fund, which consists of fees collected pursuant to K.S.A. § 28-115(i). These fees include \$1.00 per page for recording:

- (1) The first page of any deeds, mortgages or other instruments of writing, not to exceed legal size--8 ½ " x 14";
- (2) The second page and each additional page or fraction of any deeds, mortgages or instruments of writing; and
- (3) A release or assignment of real estate mortgage.

The county register of deeds collects these fees and remits them to the county treasurer. The county treasurer then remits the fees to the state treasurer on a quarterly basis to be deposited in the Heritage Trust Fund. However, the county treasurer only remits up to \$30,000 to the

State within a year; any amounts over the \$30,000 threshold are credited to the county general fund.

[Back to top](#)

### **20.3.9 Deputy/Assistant Register of Deeds**

Kansas law does not require deputies or assistants for the registers of deeds. K.S.A. § 19-1202 states:

The register of deeds may appoint a deputy register of deeds. The appointment shall be in writing, filed and recorded in the office of the register of deeds. In addition to the deputy, the register also may appoint, promote, demote and dismiss any assistants necessary to carry out the duties of the office.

K.S.A. § 19-1202 further states that the register of deeds has the authority to supervise all assistants and deputies that work in the office. The register's surety bond also covers the actions of the deputies and assistants that work in the register of deeds office.

[Back to top](#)

### **20.3.10 County Attorney**

Kansas law empowers the county attorney to "prosecute or defend on behalf of the people all suits, applications or motions, civil or criminal, arising under the law of this state, in which the state or their county is a party or interested party."<sup>55</sup> Additionally, the county attorney advises the Board and county officers on all legal matters.<sup>56</sup> In counties with a population of less than 70,000 that do not have a county auditor, the county attorney must meet with the county Board at each session when bills and accounts are presented for purposes of review as to the liability of the county.<sup>57</sup> There is no prohibition on private practice for county attorneys since most are part-time, and there is no minimum experience requirement.

[Back to top](#)

### **20.3.11 Personnel Policies Applicable to the County Attorney**

The 1983 bill relating to personnel policies and pay plan provisions originally covered county attorneys, but the Legislature ultimately deleted the provision.<sup>58</sup> Although the legislative history does not specify why the statutes exclude county attorneys,<sup>59</sup> there are two considerations:

- (1) Under the Model Rules of Professional Conduct (MRPC) adopted by the Supreme Court of Kansas, an attorney with subordinate lawyer and non-lawyer assistant employees is ultimately responsible for the ethical conduct of those employees.<sup>60</sup> Therefore, the county attorney and not the Board must have control over personnel and personnel procedures to ensure conformance with the ethical rules; and

- (2) Within the legal profession there are certain specific qualifications for paralegals and legal assistants. In hiring, the county attorney is in the best position to determine which prospective employees meet those qualifications.

Consequently, unless the county attorney adopts the county personnel policies and procedures, the Attorney General has concluded there is no obligation to follow the county's policies.<sup>61</sup> Therefore, the county attorney is not bound by the county's personnel policies and procedures, pay plan, or any applicable collective bargaining agreements. The Board can, however, reduce the salary of a county attorney if it first follows the publication, notice, and hearing requirements of K.S.A. § 79-2929a.<sup>62</sup>

[Back to top](#)

### **20.3.12 Assistant County Attorney**

Kansas law authorizes assistant county attorneys, but in a somewhat different manner than other deputies and assistants.<sup>63</sup> A county attorney has inherent statutory power, within budget limitations, to appoint assistant county attorneys as necessary to accomplish office business.

[Back to top](#)

### **20.3.13 District Attorney**

There are six counties in Kansas that have district attorneys who are full-time prosecutors of criminal cases.<sup>64</sup> They are elected for four-year terms of office. District attorneys cannot engage in the private practice of law and must be admitted to practice law in Kansas for five years before holding office.

[Back to top](#)

### **20.3.14 County Counselors**

The Board may appoint a county counselor under the provisions of K.S.A. § 19-247 *et seq.* to perform the following duties:

- (1) Attend meetings of the Board;
- (2) Give advice upon all legal questions that arise and assist the Board on all legal matters referred to the county counselor;
- (3) Commence, prosecute, or defend—as the case requires—all civil suits or actions in which the county is interested and represent the county in matters of civil law;
- (4) Prepare all contracts and other papers required by the Board and furnish to the Board, when requested by it, written opinions on legal matters pending before the Board; and
- (5) Perform all duties in civil matters that have previously been required by law of the county attorney.

K.S.A. § 19-248 (with a limited exception) relieves county attorneys and district attorneys of the obligation to represent counties in civil actions when the Board appoints a county counselor, but it does not affect the authority of county and district attorneys to commence and control criminal prosecutions. The Attorney General has opined, however, that this policy does not

preclude county counselors from rendering advice and written opinions to the Board regarding matters with criminal implications.<sup>65</sup>

Over a third of counties currently appoint county counselors. The Attorney General has classified county counselors as “county officers.”<sup>66</sup> The County Counselors Association of Kansas provides more information at: [www.countycounselors.org](http://www.countycounselors.org).

Finally, it is important for the Board to consider the role of the county counselor. A recent Kansas Supreme Court case found that it was improper for a county counselor to serve in dual roles as the Board's legal advisor and as the Board's advocate during a damages hearing after the Board decided to vacate two roads.<sup>67</sup> Boards must not ask its county counselor to serve in conflicting roles that may create bias.

[Back to top](#)

### **20.3.15 Clerk of the District Court**

The clerk of the district court is an employee of the court, and the county commission has no authority over the clerk.<sup>68</sup> The clerk performs all duties required by law, rules, and practices of the courts. The clerk must keep and preserve all papers, processes, pleadings, and awards that may be filed or placed in the court's office. The clerk of the court has authority to administer oaths and affirmations in all cases and may also make acknowledgments of deeds, mortgages, and other instruments of writing. Liens for materials and labor furnished under contract for improvement or repairs of land, buildings, and appurtenances are filed with the clerk of the court. The court's clerk also enters the lien of record on the mechanic's lien docket—the docket addressing liens to protect unpaid suppliers of labor and materials for construction projects.<sup>69</sup>

In divorce cases involving alimony or support, the clerk issues receipts to the payor, and issues checks to the parties entitled to receive payments. In criminal cases whenever the defendant is found guilty and ordered to a state institution, the clerk issues these commitments. Paroled defendants must first post bond with the clerk before their release. In some counties, the clerk of the court impanels and swears in the jury. After a jury reaches a verdict, the clerk reads the decision to the court, and—when requested—polls each individual juror.

[Back to top](#)

### **20.3.16 County Administrator**

Several Kansas counties have created the office of county administrator, which is outlined in Kansas statute.<sup>70</sup> Typical responsibilities for a county administrator include personnel, budgeting, and general administration, with the powers and duties prescribed by the resolution creating the office. As in the case of a city manager, the administrator reports directly to the governing body; the Board essentially delegates powers exercised by the county administrator.

There are many significant benefits to incorporating a professional administrator. Foremost is the freeing power to allow commissioners to focus on policy, while the administrator executes and oversees the county business under the direction of the Board. The International City/County Management Association has more information on professional administration at:

<https://icma.org/documents/questionnaire-determining-value-professional-administratormanager>. You can also contact the Kansas Association of City/County Management (KACM) for another resource: [www.kacm.us/](http://www.kacm.us/).

[Back to top](#)

### **20.3.17 Other County Officers**

There are other county officers, some provided by statute and others created by resolution. These offices include the director of noxious weeds and the director of civil defense. Some counties have a finance administrator and some have a county auditor.

All Kansas counties have a road supervisor who is responsible for supervising the county road function. Some counties have appointed a licensed professional engineer to do this task. The Board can also designate the county engineer as road supervisor to fill both positions. Counties have the authority to form joint engineering districts with neighboring counties.

Several Kansas counties have created a department of public works, which is under the direction of a director of public works.<sup>71</sup> These departments may have more responsibilities than the typical highway department, such as the collection and disposal of refuse, maintenance of public facilities, and performing inspection services. The director must be a licensed professional engineer or qualified under K.S.A. § 68-501.

[Back to top](#)

## **ARTICLE 4: THE AUTHORITY OF THE COUNTY SHERIFF**

### **20.4.1 The Role of the County Sheriff**

The courts generally view the sheriff as the chief law enforcement officer in all but one of the 105 counties in Kansas, but there is some dispute on this point.<sup>72</sup> In *The Matter of Diehl*<sup>73</sup> and *State v. Malbrough*,<sup>74</sup> the courts held the county attorney is the chief law enforcement officer in the county. The counterbalance is *State v. Mahkuk*, where the court recognized the sheriff as the chief law enforcement officer in the county.<sup>75</sup>

The sheriff is responsible for maintaining law and order, enforcing state law, operating a county jail (a duty in many counties), collecting delinquent property taxes, and acting as an officer of the courts.

The sheriff's appointment authority, as established by K.S.A. § 19-805, is not uniformly applicable to all counties.<sup>76</sup> Therefore, counties may alter the statute by charter resolution in accordance with K.S.A. § 19-101b.

American law, following English custom, has historically vested the office of the sheriff with important and unique judicial and ministerial powers. In 1919 the Kansas Supreme Court affirmed these powers when it said:

The sheriff is the state's chief executive and administrative officer in his county. In the exercise of executive and administrative functions, in conserving the public peace, in vindicating the law, and in preserving the rights of the government, he represents the sovereignty of the state, and he has no superior in his county.<sup>77</sup>

A sheriff acts in his or her own name and with great latitude. As the Kansas Supreme Court said in *Board of County Commissioners of Lincoln County v. Nielander*, 275 Kan. 257, 261, 62 P.3d 247 (2003):

The sheriff is an independently elected officer whose office, duties and authorities are established and delegated by the legislature. The sheriff is not a subordinate of the board of county commissioners, and neither are the undersheriff or the sheriff's deputies and assistants. Rather, the sheriff is a state officer whose duties, powers and obligations derive directly from the legislature and are coextensive with the county board.

There are examples where the sheriff is liable for county responsibilities instead of the commission. Foremost are jail operations, which fall to the sheriff and not the Board. The sheriff has broad powers under K.S.A. § 19-805 to deputize others to assist the office. Any personnel decision a sheriff may make with regard to deputies and assistants is subject to the limitations stated in K.S.A. § 19-805, which contains the same four provisions for personnel and pay policies applicable to other county employees. One limitation, however, is that this does not apply to the appointment of an undersheriff and the sheriff's authority over an undersheriff's continued employment.<sup>78</sup>

Further, Attorney General Opinion 2004-13 held that the Board can participate in public employee negotiations under PEERA, but the sheriff is not bound by those negotiations, or any contract produced from negotiations unless the sheriff consents.

[Back to top](#)

#### **20.4.2 The Unique Role of the Undersheriff**

To understand the powers given to an undersheriff, we first need to study the definitions of "deputy" and "agent." The powers given to a deputy can be much greater than powers normally given to an agent.

A general deputy (sometimes called an "undersheriff") by virtue of his appointment had general authority to execute all ordinary duties of the office of sheriff. Therefore, an undersheriff can act in his own name and can bind the sheriff by any action.<sup>79</sup>

A special deputy is one appointed for a special occasion or a special service (such as to serve warrants, or to assist in keeping the peace). He acts under a specific (not a general) appointment and authority. His authority is limited and specific to a special role.

K.S.A. § 19-803 authorizes the appointment of an undersheriff:

The sheriff of each county shall, as soon as may be after entering upon the duties of his office, appoint some proper person as undersheriff of said county, who shall also be a general deputy, to hold during the pleasure of the sheriff; and as often as a vacancy shall occur in the office of such undersheriff, or he become incapable of executing the same, another shall, in like manner, be appointed in his place.

That said, the undersheriff still serves at the pleasure of the sheriff, who has powers of appointment and removal. Thus, the 10<sup>th</sup> Circuit found the undersheriff to be personally accountable to only one public official.<sup>80</sup> This high level of personal accountability is necessary since the sheriff is both politically and civilly liable for any default or misconduct by the undersheriff in the performance of his or her official duties. Further, the undersheriff is not a “county employee” as defined by Title VII; he or she serves at the pleasure of the sheriff.<sup>81</sup> Appointment and discharge of the undersheriff is exclusively vested in the sheriff. The Board may not control or affect the appointment of an undersheriff, but it remains an open question whether the sheriff must apply the county’s existing personnel policies and procedures to the undersheriff. But because the undersheriff is also a general deputy, all other personnel decisions including salary, may be subject to any county personnel policies and plans listed in K.S.A. § 19-805.<sup>82</sup>

[Back to top](#)

### **20.4.3 Deputies**

The sheriff also has the discretionary power to appoint, promote, and dismiss special deputies and assistants necessary to carry out the duties of the office. But any termination of a deputy must be in compliance with the county’s policies and procedures established under K.S.A. § 19-805.<sup>83</sup>

[Back to top](#)

### **20.4.4 The Sheriff’s Budget**

The sheriff’s budget sometimes creates conflict with the Board. K.S.A. § 19-805(a) empowers the sheriff of each county “to appoint, promote, demote and dismiss additional deputies and assistants necessary to carry out the duties of the office.” But additional staff in the sheriff’s office increases budgetary needs.

The conflict arises because the authority and responsibility for county expenditures is vested in the Board.<sup>84</sup> K.S.A. § 19-805(c) requires the sheriff to submit a budget for the operation of the office to the Board “for their approval.” Thus, even though the legislature intended that the sheriff exercise personnel decisions without commission’s approval, budgetary limitations created by commissioners may still affect hiring practices. The sheriff is free to hire additional

staff without the commission's prior approval, as long as it is within the limitations of the annual budget.

K.S.A. § 19-805(d)(4) states that any personnel action taken by the sheriff is subject to "the budget for the financing of the operation of the sheriff's office as approved by the board of county commissioners." The Board has the power to alter the approved budget of the sheriff,<sup>85</sup> thus taking away spending authority granted by that budget, as long as the Board follows procedures to amend the budget.<sup>86</sup> Like the other elected offices, expenditures that are necessary for the sheriff to carry out his or her statutorily imposed duties cannot be limited by the Board.<sup>87</sup>

Further discussion regarding this subject can be found in the Kansas Supreme Court decision *Lincoln County Commissioners v. Nielander*, 275 Kan. 257, 62 P.3d 247 (2003).

[Back to top](#)

#### **20.4.5 Conclusion**

K.S.A. § 19-229 gives the county commissioners the "exclusive control" of county expenditures, and the Board is vested with much discretionary authority and control over county budgetary and fiduciary matters.<sup>88</sup> But other statutes or case law limits the exercise of this authority. County offices and officers also have statutory authority to fulfill the duties of their offices. They have the power to hire, fire, and to supervise and evaluate the work product of their subordinates. Certain county officers, such as the county sheriff and the county attorney have more authority over their subordinates than other county officers.

[Back to top](#)



## CHAPTER 20 ENDNOTES

- 
- <sup>1</sup> *Black's Law Dictionary* (10<sup>th</sup> ed. 201).
- <sup>2</sup> *Durflinger v. Artilles*, 234 Kan. 484, 503, 673 P.2d 86 (1983) (internal citations omitted).
- <sup>3</sup> *Miller v. Bd. of Com'rs of Ottawa Cty.*, 146 Kan. 481, 71 P.2d 875 (1937); See Chapter 21.
- <sup>4</sup> A.G. 86-6.
- <sup>5</sup> K.S.A. § 75-4322(e).
- <sup>6</sup> K.S.A. § 19-301 *et seq.*
- <sup>7</sup> See, *Minutes, House Committee on Local Government*, March 24, 1983.
- <sup>8</sup> K.S.A. § 19-302.
- <sup>9</sup> K.S.A. § 19-503.
- <sup>10</sup> K.S.A. § 19-1202.
- <sup>11</sup> K.S.A. § 19-805.
- <sup>12</sup> 275 Kan. 257, 62 P.3d 247 (2003).
- <sup>13</sup> A.G. 87-37, 2003-15.
- <sup>14</sup> A.G. 91-65.
- <sup>15</sup> A.G. 91-65 (citing *Miller v. Ottawa Cty. Comm'rs*, 146 Kan. 481, 486, 71 P.2d 875 (1937)).
- <sup>16</sup> *Gonser v. Clay County Comm'rs*, 1 Kan. App. 2d 57, 562 P.2d 102 (1977).
- <sup>17</sup> *Weber v. Bd. of Cty Com'rs of Marshall Cty.*, 289 Kan. 1166, 221 P.3d 1094 (2009).
- <sup>18</sup> *Id.*
- <sup>19</sup> K.S.A. § 8-145.
- <sup>20</sup> K.S.A. §§ 19-212, 19-229, 19-241.
- <sup>21</sup> *Hackler v. Johnson Cty. Comm'rs*, 189 Kan. 697, 698, 369 P.2d 782 (1962).
- <sup>22</sup> A.G. 87-37, 86-166, 84-53, 82-85, 80-69.
- <sup>23</sup> *Mt. Carmel Med. Ctr v. Labette Cty. Comm'rs*, 1 Kan. App. 2d 374, 566 P.2d 384 (1977); A.G. 80-69.
- <sup>24</sup> K.S.A. § 19-101.
- <sup>25</sup> K.S.A. §§ 19-304, 19-305.
- <sup>26</sup> K.S.A. § 19-302.
- <sup>27</sup> *Id.*
- <sup>28</sup> K.S.A. §§ 19-304, 19-305.
- <sup>29</sup> K.S.A. §§ 19-311, 19-312, 19-313.
- <sup>30</sup> K.S.A. § 19-304.
- <sup>31</sup> K.S.A. § 19-321.
- <sup>32</sup> K.S.A. § 19-312.
- <sup>33</sup> *Id.*
- <sup>34</sup> K.S.A. § 19-315.
- <sup>35</sup> K.S.A. § 19-312.
- <sup>36</sup> K.S.A. § 32-984.
- <sup>37</sup> K.S.A. §§ 19-312, 19-622, 79-1803, 79-1806.
- <sup>38</sup> K.S.A. § 19-2687.
- <sup>39</sup> K.S.A. § 19-430.
- <sup>40</sup> K.S.A. § 19-430 *et seq.*
- <sup>41</sup> K.S.A. § 79-1460(a).
- <sup>42</sup> K.S.A. § 79-1412a for the general duties of the county assessor.
- <sup>43</sup> K.S.A. § 19-431.
- <sup>44</sup> *Kennedy v. Shawnee Cty. Comm'rs*, 264 Kan. 776, 958 P.2d 637 (1998).
- <sup>45</sup> K.S.A. § 19-506.
- <sup>46</sup> K.S.A. § 19-507.
- <sup>47</sup> K.S.A. § 19-508, 19-520 *et seq.*
- <sup>48</sup> K.S.A. § 8-145.
- <sup>49</sup> *Weber v. Bd. of Marshall Cty.*, 289 Kan. 1166, 221 P.3d 1094 (2009).
- <sup>50</sup> K.S.A. § 19-503(a).

- 
- <sup>51</sup> K.S.A. § 19-1204.
- <sup>52</sup> K.S.A. § 19-1207.
- <sup>53</sup> K.S.A. § 28-115a.
- <sup>54</sup> A.G. 2010-14.
- <sup>55</sup> K.S.A. § 19-702.
- <sup>56</sup> K.S.A. § 19-704.
- <sup>57</sup> K.S.A. § 19-716.
- <sup>58</sup> See Minutes, House Committee on Local Government, March 24, 1983.
- <sup>59</sup> K.S.A. § 19-701 *et seq.*
- <sup>60</sup> Model Rules of Professional Conduct (MRPC), §§ 5.2 and 5.3.
- <sup>61</sup> A.G. 92-158.
- <sup>62</sup> A.G. 85-147.
- <sup>63</sup> K.S.A. § 19-706b.
- <sup>64</sup> K.S.A. §§ 22a-101, 22a-108, 22a-109.
- <sup>65</sup> A.G. 82-210.
- <sup>66</sup> A.G. 81-170, 86-174.
- <sup>67</sup> *Davenport Pastures LP v. Morris County Board of County Commissioners*, 291 Kan. 132, 238 P.3d 731 (2010).
- <sup>68</sup> K.S.A. § 20-343.
- <sup>69</sup> *Tarleton v. Miller's of Claflin, Inc.*, 227 P.3d 23 (2010).
- <sup>70</sup> K.S.A. § 19-3a02. The counties that have a county administrator include Barton, Butler, Cowley, Douglas, Ellis, Finney, Ford, Franklin, Harper, Harvey, Johnson, Leavenworth, McPherson, Miami, Pottawatomie, Reno Saline, Sedgwick, Seward, and Wyandotte.
- <sup>71</sup> K.S.A. § 19-4501 *et seq.*
- <sup>72</sup> Riley County has an appointed director of a consolidated law-enforcement agency governed by an appointed board.
- <sup>73</sup> *The Matter of Diehl*, 243 Kan. 580, 757 P.2d 732 (1988).
- <sup>74</sup> *State v. Malbrough* 5 Kan.App.2d 295, 615 P.2d 165 (1980).
- <sup>75</sup> *State v. Mahkuk*, 220 Kan. 74, 551 P.2d 869 (1976).
- <sup>76</sup> K.S.A. § 19-4303 *et seq.*
- <sup>77</sup> *State v. McCarty*, 104 Kan. 301, 305, 179 P. 309 (1919).
- <sup>78</sup> *Lincoln Cty. Comm'rs v. Nielander*, 275 Kan. 257, 62 P.3d 247 (2003).
- <sup>79</sup> *Black's Law Dictionary*, (8<sup>th</sup> ed. 2004).
- <sup>80</sup> *Owens v. Rush*, 654 F.2d 1370 (1981) in which the 10<sup>th</sup> Circuit Court of Appeals held that the undersheriff in a county sheriff's department is "personal staff" and not an "employee within the meaning of Title VII retaliatory discharge provisions" (criticized on other grounds in *Blaisdell v. Frappiea*, 729 F.3d 1237 (9th Cir. 2013)); Title VII, 42 U.S.C. § 2000e, *et seq.*
- <sup>81</sup> *Owens v. Rush*, 654 F.2d 1370 (1981); Title VII, 42 U.S.C. § 2000e, *et seq.*
- <sup>82</sup> *Lincoln Cty. Comm'rs v. Nielander*, 275 Kan. 257, 62 P.3d 247 (2003); A.G. 84-30.
- <sup>83</sup> *Id.*
- <sup>84</sup> See K.S.A. § 19-212, *second* and *sixth*. Also, K.S.A. § 19-229 provides "the Boards of county commissioners of the several counties of this state **shall have exclusive control** of all expenditures accruing, either in publication of the delinquent tax list, treasurer's notices, county printing, or **any other expenditures.**" (Emphasis added.)
- <sup>85</sup> K.S.A. §§ 19-212, 19-229.
- <sup>86</sup> K.S.A. § 79-2929a.
- <sup>87</sup> K.S.A. §§ 19-101, 19-212, 19-229; A.G. 99-29.
- <sup>88</sup> A.G. 87-37, 87-14, 86-166, 80-69, 79-279.

## **CHAPTER 21: PERSONNEL**

### **ARTICLE 1: PERSONNEL POLICY AND PROCEDURES**

#### **21.1. Personnel Overview**

Personnel decisions are incredibly—and increasingly—important for all entities. This is particularly true for government because everyone from top to bottom serves as an ambassador on behalf of the county. There is much forethought that must go into making employment decisions, and this chapter will start the process for helping counties address this important issue.

Note that there are three types of employer-employee relationships requiring familiarity when considering personnel at the local government level:

- (1) A relationship controlled by the at-will-employment doctrine;
- (2) A relationship that is controlled by a negotiated labor agreement; and
- (3) A relationship that is controlled by the local civil service system.

[Back to top](#)

#### **21.1.2 Officer and Employee Distinguished**

County officers (as distinguished from employees) are subject to different rules of law in matters of personal liability, tenure, and the right to compensation. It is important to know whether a person holding a particular position is an officer or an employee of the county. Elected officials, such as governing body members, are officers, but appointed positions—outside of perhaps the undersheriff<sup>1</sup>—are employees, not officers.

Generally, a public officer is a position created by statute or resolution that involves tenure, continuity, and the imposition of duties. The public officer is involved in making, executing, interpreting, and administering the law. The fact that local custom, practice, policy, or law refers to an appointee as an officer does not make the person an officer. If the position does not carry an officially vested right to exercise any power of the governmental unit, and the person works under supervision of another, then the position is not an officer.

[Back to top](#)

#### **21.1.3 Personnel Rules and Regulations**

Counties should adopt an equitable system for dealing with employees. A starting point for any good personnel program is the preparation and adoption of policy and procedures governing the day-to-day activities of all county employees.

- (1) The employment manual should describe the county's official policy for personnel affairs and administration;

- (2) Employees should have a copy of the employment manual that establishes operating procedures and provides answers to personnel questions; and
- (3) Citizens should be made aware of the fact the county has implemented policies and procedures that encourage effective local government.

[Back to top](#)

#### **21.1.4 Employees of Publicly Elected Officials**

Elected county officials, such as the county clerk, treasurer, sheriff, or register of deeds have certain powers over their personnel.<sup>2</sup> These powers are subject to certain powers of the Board. K.S.A. § 19-302(c) states that an elected county clerk's authorization over their employees is subject to:

- (1) Personnel policies of the Board of County Commissioners that are applicable to all county employees other than elected officials;
- (2) Pay plans enacted by the Board of County Commissioners that are applicable to all county employees other than elected officials;
- (3) All applicable collective bargaining agreements; and
- (4) The budget of the respective department.

There is similar language for sheriffs, treasurers, and registers of deeds with some qualifiers.<sup>3</sup> See Chapter 20 for a more thorough understanding of the differences.

The Board has certain control over expenditures by elected public officials for supplies, equipment, and personnel.<sup>4</sup> But K.S.A. §§ 28-167 and 28-824 requires the county commissioners to budget a reasonable amount for the expenditure of funds to cover the salaries and compensation for assistants, deputies, clerks, and stenographers. Further, the Board must budget the necessary amount for elected officials to carry out their duties.<sup>5</sup> In order for county government to run effectively, county commissioners and elected officials need to work together to establish reasonable budgets.

[Back to top](#)

#### **21.1.5 Employee Organizations**

The Public Employer Employee Relations Act (PEERA)<sup>6</sup> is an optional law that applies only to those counties that elect to come under the act. Counties can also decide to withdraw from this act. The law authorizes the county, as an employer, to recognize certain employee organizations (sometimes labor unions) for meeting and conferring on various conditions of employment such as: salaries, hours of work, holidays, retirement benefits, and grievance procedures. The law also prohibits strikes by public employees. The Public Employee Relations Board administers the act. Under the home rule power, counties can recognize and negotiate with employee organizations. There are several local employee organizations active in Kansas. A few counties have formal or informal agreements with employee organizations.

[Back to top](#)

### **21.1.6 Employee Oaths**

Before commencing the duties of office, every county officer and employee must subscribe in writing to an oath of office.<sup>7</sup> Any officer or employee who fails to execute the oath is not to receive payment for work until the oath is executed.<sup>8</sup>

[Back to top](#)

### **21.1.7 Residency Requirements**

There is no general or uniform state law setting residency requirements for county employees. Generally, except for county attorneys and judges, county officers must be residents of the county. Most counties fix residency requirements for employees by resolution. Courts have regularly upheld continuous residency requirements—those that require an employee to reside within the county throughout employment. But courts have opposed durational residency requirements that require a potential employee to reside within a county for a set period *before* beginning employment with the county. Elected officers, however, must reside within the county. Consider the residency chart in Chapter 2 to evaluate special statutory residency requirements.

[Back to top](#)

### **21.1.8. Federal Officers and Employees**

Kansas statutes do not prohibit a federal officer or employee from holding a county office. But some federal statutes and regulations prohibit certain federal officers and employees from holding certain local government positions. Therefore, federal officers and employees should check with their departments before accepting local government positions to avoid jeopardizing their federal positions.

[Back to top](#)

### **21.1.9 Interchange of Governmental Employees**

Kansas Law authorizes a governmental agency, such as a county, to exchange employees with another governmental agency for various purposes.<sup>9</sup> It is possible through an agreement for the cooperating governments to provide for the exchange of employees on an on-call basis.

[Back to top](#)

### **21.1.10 Discharge of Employees**

One of the most difficult aspects of county service is deciding whether to discharge an employee. It is a difficult task in the private sector, but it is even more challenging when terminating someone in the glare of public light. That said, as resources become scarcer, it is vital for counties to hire and maintain employees who will effectively serve the organization.

**General Rule – Employment at Will:** If there is no contractual relationship between the employer and the employee that specifies the employment terms, duration of employment, or causes to end employment, then the employer can terminate employees for any non-discriminatory reason and the employee can leave at will.<sup>10</sup>

While state statutes generally delegate authority to discharge employees to specific county officers, governing body members should consider the complexity of the law surrounding such a decision and always consult an attorney before termination. The courts have consistently held that the due process clause of the 14<sup>th</sup> Amendment to the U.S. Constitution may provide certain procedural protections to public employees. There are many examples where state law, county resolution, county policy or contract, or union agreements have created a “property interest” in employment. When this happens, employers can only discharge employees if there is adequate justification. In these instances, the U.S. Supreme Court has held that the employee has a constitutional right under the due process clause to:

- (1) Oral or written notice of the charges against the employee;
- (2) An explanation of the employer’s evidence; and
- (3) An opportunity to present his or her side of the story *before* being discharged.<sup>11</sup>

These pre-termination due process procedures may need to be followed by a post-termination hearing complete with a right to counsel and to cross-examine witnesses. Consequently, it is important to avoid needlessly giving employees a property interest in their jobs. Also, the KAC strongly recommends consulting with the county attorney or counselor before discharging or taking any adverse personnel action against county employees.

[Back to top](#)

#### **21.1.11 Veterans Preference**

Kansas recognizes the service and sacrifice of veterans by providing employment benefits to those who have given to their country. The Kansas Legislature has long offered these benefits, but the State offered clarifying language in recent years to help explain how the benefit works and to whom the law applies.<sup>12</sup>

[Back to top](#)

##### **Eligibility**

K.S.A. § 73-201(a)(1) defines a veteran as any person who entered into the armed forces and left in honorable standing. View the statute for a full list of eligible persons, which can include spouses. The statute specifically exempts conscientious objectors from the preference law.<sup>13</sup>

##### **Preference**

As part of the veterans’ benefit, Kansas created a preference for initial employment and first promotion for veterans in state government, Kansas cities, and counties, if the individual is competent to perform the services. A veteran’s age or physical or mental disability cannot disqualify a person from this benefit, as long as the factors do not render the veteran incompetent to perform the duties of the position. If the veteran can competently perform the duties of the position, the county must consider the individual for the position. If the veteran is not hired, the hiring authority must notify the veteran by certified mail or personal service within 30 days of filling the position. The notice must advise the veteran of any administrative appeal process that may exist.

The statute defines the term “competent.” It means a good faith determination that the person is likely to successfully meet the performance standards of the position based on what a reasonable person knowledgeable about the position would conclude. The basis for the determination includes experience, training, education, licensure, certification, and other factors as decided by the decision-making authority to determine the applicant’s overall qualifications. The decision-making authority is required to document the factors prior to beginning the selection process.<sup>14</sup>

All notices of job openings and all applications for employment must state that the job is subject to a veterans’ preference; explain how the preference works; explain how veterans may take advantage of the preference; and post a written statement setting forth the qualifications, standards, and process for selection.<sup>15</sup> Every county human resources department must openly display documentation indicating the county’s offering of a veterans’ preference.<sup>16</sup>

The veteran or spouse wanting to use veterans’ preference must provide a copy of the veteran’s DD214 form to the hiring authority.<sup>17</sup> The DD214 does not indicate whether the person was a conscientious objector; therefore, the county’s employment application should include a question to that effect.

A veteran who is not provided a preference as required by this law may bring a lawsuit in district court, after exhausting all administrative remedies.<sup>18</sup>

The statute specifically states that any county resolution that provides for retirement or termination based on age supersedes the state law on veterans’ preference.<sup>19</sup> The statute also lists employee positions that are not subject to the Kansas veterans’ preference law: (1) offices filled by election, persons appointed to fill vacancies in elected offices, and the personal secretary of elected offices; (2) persons appointed to boards or commissions; (3) persons employed on a temporary basis; (4) heads of departments; (5) positions held by a patient, inmate, or student from a state institution; and (6) certain positions that require licensure (e.g. doctors and lawyers). “Key employees” are also exempt from the law, and these employees are defined to include any individual hired for a county at-will position. The definition “key employee” also includes unclassified employees and department or agency heads. Employees who serve as the immediate subordinate, secretary, or administrative assistant to a person holding an at-will, unclassified, or department/agency head position who hold a confidential relationship to the officer are also exempt from the preference law.

For guidance on the law, look to the Kansas Department of Administration. In advising state agencies on the new law, DOA said the preference does not cover persons who receive just a *general* discharge. See Bulletin No. 08-01, July 1, 2008, <https://admin.ks.gov/offices/personnel-services/agency-information/personnel-bulletins/bulletin-08-01---veterans-preference-policy>. That same bulletin requires a spouse asserting the preference to produce a copy of the marriage license, and if the spouse is asserting preference because the veteran died in service, an official notice or letter from the federal government showing that the spouse died while serving in the armed forces. Additional information on how the state of Kansas interprets and

implements this new law can be found on the website of the Kansas Department of Administration: <https://admin.ks.gov/services/state-employment-center/veterans/claiming-veteran-preference>.

[Back to top](#)

## **ARTICLE 2: PERSONNEL SALARIES AND BENEFITS**

### **21.2.1 Salaries and Wages**

There is no state statute relating to the salaries of county appointed officers and employees. There is, however, a state minimum wage and maximum hour law<sup>20</sup> that fixes a minimum wage of \$7.25 per hour as of January 1, 2010 and mandatory overtime for all persons not covered by the federal Fair Labor Standards Act (FLSA).

Counties often use resolutions, county pay plans, or administrative documents to set salaries. For certain officers, state law mandates that their salary be set by resolution, *e.g.*, K.S.A. § 19-434 for county appraisers. It may be worthwhile to contact other similar counties to compare salaries and benefits for certain positions to provide a benchmark for your own employees.

[Back to top](#)

### **21.2.2 Salary Reduction**

The Board can reduce the salary of county officers if doing so is reasonable and is done with adequate regard to the officer's duties and responsibilities. The decision must also evaluate availability of funds and the degree of public need for certain governmental services in the county.<sup>21</sup> K.S.A. § 19-212 gives the commissioners the right to set expenses for the county. K.S.A. § 19-228 gives the commissioners the power to review all claims against the county including claims for salaries of county officers. K.S.A. § 19-229 gives the commissioners the exclusive control of county expenditures not subject to state law.

[Back to top](#)

### **21.2.3 State Minimum Wage and Maximum Hours**

The Kansas Minimum Wage and Maximum Hours Law fixes a state minimum wage of \$7.25 per hour and mandatory overtime for all persons not covered by the federal Fair Labor Standards Act—the federal wage-hour law.<sup>22</sup> Certain executive, administrative, and professional employees are exempt from both state and federal laws regarding employees covered by the FLSA. These employees must meet certain criteria to qualify for the exemptions. The Department of Labor provides helpful guidelines on exempt status: <https://www.dol.gov/agencies/whd/flsa>.

[Back to top](#)

### **21.2.4 Fire and Law Enforcement Exemptions**

There are special FLSA provisions for computing hours of work for employees engaged in EMS, fire protection, or law enforcement activities.<sup>23</sup> K.S.A. § 44-1204 establishes the limit on days



and hours that may be worked on a tour of duty. Counties should set tours of duty by resolution.<sup>24</sup>

[Back to top](#)

#### **21.2.5 Legal Holidays**

The state currently designates 10 days as legal holidays. They are New Year's Day (January 1); Martin Luther King Jr. Day (third Monday in January); President's Day (third Monday in February); Memorial Day (last Monday in May); Juneteenth (June 19); Independence Day (July 4); Labor Day (first Monday in September); Veteran's Day (November 11); Thanksgiving Day (fourth Thursday in November); and Christmas Day (December 25).<sup>25</sup> County governing bodies have authority to determine county employee workdays.

The fact that a certain day is declared a legal holiday by state or federal law is not binding on a county. Counties should set holiday pay and hours by resolution for county employees.

[Back to top](#)

#### **21.2.6 Income Tax Withholding**

The governing body of every county must appoint an agent to withhold and collect the withholding tax required by federal law from salaries and wages of its officers and employees. The withholding agent must transmit the withholding tax collected to the appropriate federal collector at the time and in the amount prescribed by the Federal Revenue Act. The county must also withhold state taxes from county employees' wages.<sup>26</sup>

[Back to top](#)

#### **21.2.7 Social Security**

All Kansas counties are under the federal social security program. As a result, the county, its employees, and elected officials must contribute taxes under the Federal Insurance Contributions Act. The county pays its contributions from the same fund from which wages are paid or from a special employee-benefits fund. The county must withhold the employees' contributions from their paychecks.<sup>27</sup> The Division of Accounts and Reports in the Kansas Department of Administration oversees social security for political subdivisions. The contributions are paid directly to federal social security offices.

[Back to top](#)

#### **21.2.8 Workers' Compensation**

The law covering workers' compensation is found at K.S.A. § 44-501 *et seq.* Workers' compensation is mandatory for all county employees, including volunteer law enforcement officers, volunteer fire fighters, volunteer ambulance attendants, and volunteer emergency medical technicians.<sup>28</sup> A county may become a self-insurer.<sup>29</sup> If a county elects to act as a self-insurer, it must by resolution create a separate fund that serves as a reserve fund for the payment of workers' compensation claims, judgments, and expenses. The law requires that all on-the-job or job-related accidents (no matter how minor) be reported to the Director of Workers' Compensation in the Department of Labor. The Division of Worker's Compensation provides forms to properly report accidents: [www.dol.ks.gov/wc](http://www.dol.ks.gov/wc).

[Back to top](#)

### **21.2.9 Unemployment Compensation**

County employees are covered under the state employment security law.<sup>30</sup> Benefits under the act are payable from the employment security fund according to rules and regulations adopted by the state's Department of Labor.<sup>31</sup>

[Back to top](#)

### **21.2.10 Kansas Public Employees Retirement System (KPERS)**

All Kansas counties are under the Kansas Public Employees Retirement System. The system has changed significantly over the years, and the KPERS website provides the best explanation of the program: [www.kpers.org](http://www.kpers.org).

There is a special retirement plan for law enforcement officers and fire fighters called the Kansas Police and Firemen's Retirement System, which is a division within KPERS.<sup>32</sup>

### **21.2.11 Deferred Compensation**

Counties may authorize their employees to participate in the state deferred compensation plan<sup>33</sup> or the KAC-approved plan sponsored by the National Association of Counties (NACo). Deferred compensation plans offer many tax favored investment options for retirement purposes. The KAC/NACo plan is currently administered by Nationwide.<sup>34</sup> Counties must pass a home rule resolution to use the KAC-approved program. Enrollment in the KAC/NACo approved plan is open to any individual who has achieved full employment status with the county.

Contributions to a deferred compensation program are initiated solely by the employee through payroll deductions.

[Back to top](#)

### **21.2.12 Other Employee Benefits**

Many counties have established formalized plans for various employee benefits. Almost all counties grant various benefits for regular employees. Common benefits include paid vacations, holidays, and sick leave. Other benefits used by many counties include group life and accident insurance and flexible spending ("cafeteria") plans. Any employee benefit plan involving payroll deductions—when not authorized by statute—should be authorized by a home rule resolution.

[Back to top](#)

## **ARTICLE 3: THE FEDERAL FAIR LABOR STANDARDS ACT (FLSA)**

### **21.3.1 The Fundamentals**

The Fair Labor Standards Act establishes minimum wage, overtime pay, recordkeeping, and child labor standards for full-time and part-time workers in the private sector and in the federal, state, and local governments.

### **Minimum Wage and Maximum Hours**

FLSA requires that employers pay the federal minimum hourly wage of \$7.25 to covered employees for all hours worked.<sup>35</sup> Covered employees must be compensated at the rate of at least 1.5 times their regular rate of pay for all hours worked in excess of 40 hours in any given work week. Other special wage and hour rules apply to public safety employees, persons employed by the same employer for two jobs, and for volunteers.

### **Exemptions from FLSA**

The federal law exempts some employees from the provisions relating to minimum wage and overtime pay. An exemption from both the minimum wage and overtime pay requirements of the FLSA is provided for any county employee employed in a bona fide executive, administrative, professional, trainee/student, or volunteer capacity.<sup>36</sup> Few county positions are likely exempt, and counties must confer with an attorney before exempting a position. This is chiefly important after 2016 overtime rule changes:

<https://www.dol.gov/agencies/whd/overtime/2019/index>.

### **Child Labor**

The FLSA child labor provisions are designed to protect the educational opportunities of minors and to prevent dangerous working conditions for them. The laws restrict the number of hours a child under the age of 16 can work and prohibits certain hazardous occupations for minors. Be certain to note FLSA requirements when it comes to summer mowing, as this is a regular area of violation for public employers.

### **Record Keeping**

The FLSA requires employers to keep records on wages, hours, and other items, as specified in Department of Labor's regulations. For example, an employer must keep track of the employee's basic information and the hours worked, any overtime pays, deductions to wages, dates of payment, and pay periods.

### **Equal Pay**

Since 1963, the FLSA has required equal pay to male and female workers in the same establishment who perform work under similar working conditions that require equal skill, effort, and responsibility.<sup>37</sup> The Equal Pay Act, which added the equal pay clause to the FLSA, only applies to wages and not hiring, promotions, or transfers. But Title VII of the Civil Rights Act does require equality in these other areas.

### **Nursing Mothers**

The Patient Protection and Affordable Care Act requires employers to provide a reasonable break for an employee to express breast milk for her nursing child for one year after the child is born. Employers are also required to provide the nursing mother with a place, other than a bathroom, which is shielded from view and free from intrusion from coworkers and the public.

### 21.3.3 On-Call Time

On-call time is generally compensable. An employee is on call if the employee is not allowed to leave the premises of the employer—meaning the employee cannot use the time for personal pursuits. If the employee is allowed to leave the premises but is restricted from using the time for personal pursuits, the employee can be considered on call. The county counselor must evaluate whether the employee's time is spent predominantly for the benefit of the employee or the employer. Further, the county must consider geographical restrictions on the employee's movement, frequency of calls to the employee, and the time limit required of the employee for a response. Other factors include:

- (1) The agreement between the parties;
- (2) The nature and extent of the restrictions;
- (3) The relationship between the services rendered and the "on call" time; and
- (4) All surrounding circumstances.<sup>38</sup>

[Back to top](#)

### 21.3.4 Compensation for Meal Time

The test to decide if non-emergency workers should be compensated for mealtime is different from determining if police officer, fire fighters, and other emergency workers should be compensated for mealtime. The test for non-emergency workers is:

- (1) Is the employee completely relieved from duty for eating meals?
- (2) Is the meal period at least 30 minutes long?
- (3) Is the employee free to leave his or her post of duty, although he or she may be confined to the employer's premises?

Federal regulations and court decisions control mealtime compensation for police officers, fire fighters, and other emergency workers like EMS employees. Having certain duties does not automatically entitle these employees to be compensated for mealtime. The test to determine if their mealtime should be compensated by the employer is very similar to the test to find out if on call employees should be compensated. The 10<sup>th</sup> Circuit has held that if the employee is "primarily...engaged in work-related duties during meal periods," then the employee should receive compensation.<sup>39</sup> The second part of the test requires the mealtime to be predominantly spent for the benefit of the employer. If the employee's mealtime or attention is devoted primarily to official responsibilities (such as responding to calls, emergencies, or criminal activity), the employee's mealtime is less than 30 minutes, or the employee is restricted from leaving a certain area, then the employee's mealtime may have to be compensated.<sup>40</sup>

[Back to top](#)

## **ARTICLE 4: STATE AND FEDERAL LAWS AGAINST EMPLOYMENT DISCRIMINATION**

### **21.4.1 Discrimination in Hiring and Promotions**

Both federal and state laws make it unlawful for an employer make employment decisions based on race, color, sex, national origin or ancestry, religion, or physical disability.

Under federal law, all counties with 15 or more employees must comply with the Civil Rights Act.<sup>41</sup> This act prohibits employment decisions based on race, color, religion, sex, or national origin. The Equal Employment Opportunity Commission (EEOC) enforces the federal laws. The Age Discrimination in Employment Act of 1967<sup>42</sup> prohibits employment discrimination because of age against persons over 40 years of age.

[Back to top](#)

### **21.4.2 Equal Employment Opportunity Commission**

The Equal Employment Opportunity Commission (EEOC) has the authority to investigate cases of discrimination. This discrimination can be from a violation of the Equal Opportunity Act or from other federal statutes, such as the Americans with Disabilities Act. The EEOC can bring an enforcement action against an employer in federal court. The EEOC also has the authority to establish regulations about the enforcement and guidelines of a particular statute.

[Back to top](#)

### **21.4.3 Resolution and Enforcement Agencies**

Cases arise where the employer has violated both federal and state discrimination statutes. If the discrimination arises from a violation of a law that falls under federal acts like the Civil Rights Act of 1964, the Equal Opportunity Act, or the Americans with Disabilities Act, the EEOC typically cooperates with the state agency in charge of regulating the action under state law. Allegations of violations of certain acts authorize the EEOC to allow the state agency to try to resolve the conflict before they are allowed to intervene.

[Back to top](#)

### **21.4.4 Employee Constitutional Rights**

County commissioners—in their role as public employers—must recognize that county employees have rights guaranteed by the U.S. Constitution. Violations of those rights and liability for counties most frequently arise in the First Amendment right to free speech, but can also involve invasions of privacy, due process, search and seizure, and more.

The U.S. Supreme Court held in *Elrod vs. Burns*<sup>43</sup> and *Branti vs. Finkel*<sup>44</sup> that the firing of non-policy-making public employees—solely because of their political beliefs—violates the First Amendment. Additionally, courts have held several times that a public employer cannot discipline or discharge a public employee if the action is based on the employee’s speech regarding a matter of public concern.<sup>45</sup> Discharging employees for filing workers compensation claims or for whistle blowing is also illegal.

[Back to top](#)

#### **21.4.5 Section 1983 (Federal Civil Rights)**

The Civil Rights Act of 1871 provides a legal remedy to any person whose constitutional or statutory rights have been violated by an act of the government. The act, which is commonly known as “Section 1983,” provides that:

Every person, who under color of a statute, ordinance, regulation, custom, or usage, of a State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.<sup>46</sup>

State or federal laws cannot deprive another person of their civil rights. If a person’s rights are violated, the person harmed may be awarded financial compensation and other remedies. This law also applies to municipalities meaning it must take care not to violate anyone’s constitutional rights.<sup>47</sup>

A 2004 court case describes how a court will determine if a county has committed discrimination in employment practices.

[T]he County can still be held liable if the practice is “so permanent and well settled as to constitute a ‘custom or usage’ with the force of law.” In order to establish a custom, the plaintiff must prove: 1) the existence of a continuing, persistent and widespread practice of unconstitutional misconduct by the County’s employees; 2) deliberate indifference to or tacit approval of such misconduct of the County’s policymaking officials after notice to the officials of that particular misconduct; and 3) that plaintiff was injured by virtue of the unconstitutional acts pursuant to the County’s custom and that the custom was the moving force behind the unconstitutional acts.<sup>48</sup>

[Back to top](#)

#### **21.4.6 Kansas Act Against Discrimination**

Besides federal laws that prohibit discrimination based on disabilities, all counties are subject to state statutes with similar prohibitions against employment discrimination. The Kansas Act Against Discrimination<sup>49</sup> makes it unlawful for an employer to discriminate against an individual in the hiring, termination, or in other terms and conditions of employment based on that person’s race, religion, color, sex, physical disability, or national origin. The Kansas Act Against Discrimination defines an employee as mentally or physically handicapped when the person is substantially limited in performing life’s major activities.

[Back to top](#)

#### **21.4.7 Affirmative Action**

Affirmative Action Plans are now being replaced by programs to provide additional training and education to minorities that aid them in seeking job promotions. County affirmative action programs help ensure that unlawful employment discrimination does not occur. Counties and county officials can personally be liable under federal and Kansas law. Discrimination can also affect a county's eligibility to receive federal funds.

[Back to top](#)

#### **21.4.8 Americans With Disabilities Act**

The Americans with Disabilities Act (ADA)<sup>50</sup> prohibits discrimination against people with disabilities. The Act covers all employers (public and private) that have at least 15 employees. The ADA defines "disability" as:

- (1) A physical or mental impairment that substantially limits one or more major life activities (sometimes referred to in the regulations as an "actual disability"); or
- (2) A record of a physical or mental impairment that substantially limited a major life activity ("record of"); or
- (3) When a covered entity takes an action prohibited by the ADA because of an actual or perceived impairment that is not both transitory and minor ("regarded as").

The employer must provide reasonable accommodations for disabled employees unless these accommodations constitute an undue financial hardship on the employer or a direct threat to public safety. Note that this act has changed and expanded dramatically in recent years. It is important to ensure your county's compliance with the law.

The Americans with Disabilities Act also applies to public services provided by state and local governments. A primer document for state and local officials is available at [www.ada.gov](http://www.ada.gov).

[Back to top](#)

#### **21.4.9 Age Discrimination in Employment Act (ADEA)**

The Age Discrimination in Employment Act (ADEA)<sup>51</sup> prohibits age discrimination against people over the age of 40.<sup>52</sup> There are certain exceptions to the Act for employees in certain occupations, such as fire fighters and police officers. People in these occupations might be subject to maximum age restrictions and mandatory retirement. Almost all employers that have at least 20 employees are required to comply with the Act; this includes state and political subdivision employees. Another provision of the Act is that employers that provide health insurance for employees and their spouses must provide health insurance for their employees that are over the age of 65.

[Back to top](#)

#### **21.4.10 Kansas Age Discrimination in Employment Act**

Kansas also has a statute that prohibits employment discrimination based on age. The Kansas Age Discrimination in Employment Act,<sup>53</sup> administered by the Kansas Commission on Civil Rights, makes it unlawful for an employer to discriminate based on age if the person is over the age of 40.<sup>54</sup>

[Back to top](#)

#### **21.4.11 Height Restrictions**

Kansas also has a law that makes it unlawful to establish height restrictions for employment. There are exceptions to this rule for certain occupations, such as fire fighters, police officers, or security officers. These occupations can establish a minimum height of at least five feet, two inches tall.<sup>55</sup>

[Back to top](#)

#### **21.4.12 Immigration Reform and Control Act**

Congress enacted the Immigration Reform and Control Act (IRCA)<sup>56</sup> to help address illegal immigration. Generally, employers cannot discriminate against any individual (other than an unauthorized alien) with respect to the hiring or recruitment for employment because of the individual's national origin or citizenship status. But because of the IRCA and the illegality of hiring unauthorized aliens, counties must verify the work eligibility of all new job hires before they commence work.

The prospective employee must complete the first part of a Form I-9, furnished by the Immigration and Naturalization Service (INS), and the employer completes the employment-verification part of that form. The employer should only ask for documents that are on the list. Requesting additional information beyond the IRCA regulations may be discriminatory.

An employer's failure to follow the Act could result in civil and criminal penalties. The employer should also follow these guidelines:

- (1) Do not selectively discharge present employees or refuse to hire new employees based solely on foreign appearance or language;
- (2) Publicly state the county's intention to consider employing only workers who can provide proof of work eligibility; and
- (3) Complete the Form I-9 for each employee hired.

With this—and all employment decisions—be certain to contact your attorney before setting employment policies and making employment decisions.

[Back to top](#)

#### **21.4.13 Genetic Information Nondiscrimination Act**

The Genetic Information Nondiscrimination Act (GINA) prohibits discrimination based on an individual's genetic information. This includes genetic information about a family member, too.



The Act also prohibits deliberate acquisition of an employee's or an applicant's genetic information and the use by the employer of any genetic information, even if lawfully acquired.

Like the ADA, GINA requires the employer to maintain a separate confidential file containing genetic information, if the information is on record with the employer. Genetic information means an individual's genetic tests, tests of an individual's family members, or the manifestation of a disease or disorder in a family member.

Exceptions to the prohibition on acquisition of genetic information include:

- (1) An inadvertent release of the information by the employee (i.e., "My mother has Alzheimer's");
- (2) Revelations occurring during voluntary wellness programs;
- (3) Use of such information to obtain FMLA or other medical or family leave;
- (4) Information in public records, except that the employer cannot search public records for the purpose of obtaining genetic information;
- (5) Information needed to monitor effects of toxic substances in the workplace; and
- (6) Information needed by law enforcement or for human remains identification.

Even if an employer legally obtains genetic information under the exceptions or otherwise, it may not *use* this information for employment decisions.

[Back to top](#)

## **ARTICLE 5: THE FAMILY AND MEDICAL LEAVE ACT**

### **21.5.1 An Overview of the Act**

The Family and Medical Leave Act (FMLA)<sup>57</sup> provides that an eligible employee of a covered employer may take up to 12 work weeks unpaid leave for certain family and medical needs in any 12-month period, and their employment status will remain unchanged during the leave. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered military service member is entitled to 26 workweeks of leave during a 12-month period to care for the service member injured during military actions.

[Back to top](#)

### **21.5.2 Counties Covered by FMLA**

This act specifically covers counties and all public employers.

[Back to top](#)

### **21.5.3 Family and Medical Needs Covered by the Act**

The Act provides that an employee may use the Act for the following reasons:

- The birth of a child or care for a newborn child;
- The placement of a child with an employee as a result of adoption or foster care;

- When an employee must care for a family member (child, spouse, or parent) with a serious health condition;
- When the employee is unable to perform the functions of his or her job because of a serious medical condition; or
- A qualifying event for the employee's family member who is a military service member.

The term "serious medical condition" means an illness, injury, impairment, or physical or mental condition that involves either:

- Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; **or**
- Continuing treatment by a healthcare provider that includes any period of incapacity (i.e., inability to work or perform other daily activities) due to:
  1. A health condition (including treatment therefore, or recovery therefrom) lasting more than three consecutive days and any subsequent treatment or period of incapacity relating to the same condition, that also includes:
    1. Treatment two or more times by or under the supervision of a health care provider; or
    2. One treatment by a health care provider with a continuing regimen of treatment;
  2. Pregnancy or prenatal care;
  3. A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes);
  4. A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer); or
  5. Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

[Back to top](#)

#### **21.5.4 Eligible Employees**

The FMLA covers any employee who has worked more than one year for the county and at least 1,250 hours. The twelve months worked need not be continuous.

[Back to top](#)

#### **21.5.5 Qualifying Exigency for Military**

Qualifying exigencies that allow for family members of service members to use FMLA include:

- (1) Short notice deployment;
- (2) Military events and related activities;
- (3) Childcare and school activities;

- (4) Financial and legal arrangements;
- (5) Counseling;
- (6) Rest and recuperation;
- (7) Post deployment activities; and
- (8) Additional activities as agreed by the employer and employee.

[Back to top](#)

#### **21.5.6 Maintenance of Health Benefits**

A covered employer must maintain group health insurance coverage for an employee on FMLA leave just as if the employee were still on the job. If the employee is required to contribute to the cost of the health insurance, they must continue to do so while on leave.

[Back to top](#)

#### **21.5.7 Job Restoration and Evaluation**

Upon return from FMLA leave, an employee must be restored to the employee's original job or to an equivalent job with equivalent pay and benefits.

The employer may not retaliate against the employee for using FMLA and may not use the FMLA against the employee in any evaluation process.

[Back to top](#)

#### **21.5.8 Employees Notice and Certification Requirements**

Employees must give 30-days' notice to the county when they need to take FMLA leave. However, that is not always practical.

The county may also require employees to provide:

- Medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;
- A second or third medical opinion (at the county's expense) and periodic recertification; or
- Periodic reports during FMLA leave regarding the employee's status and intent to return to work.

[Back to top](#)

#### **21.5.9 Intermittent Use of FMLA Leave**

Employees may use FMLA leave on an intermittent basis. The 12 weeks allowed in 12 months should be calculated on a rolling basis.

[Back to top](#)

#### **21.5.10 Prohibited Acts and Employee Remedies**

The county may not discriminate against, retaliate against, or terminate an employee based upon the use or request to use FMLA leave.

Employees may elect to sue or file a complaint with the United States Secretary of Labor. If a court finds there has been a violation it may award the employee any one or more of the following:

- Wages;
- Employment benefits;
- Any other compensation denied or lost by the employee;
- Any monetary loss actually sustained by the employee up to an amount equal to 12 weeks wages plus interest;
- Liquidated damages up to doubling any amount above;
- Reinstatement or promotion, reasonable attorney's fees, expert witness fees, and other costs; or
- Any other judgment the court wishes to award.

[Back to top](#)

#### **21.5.11 Conclusion**

The personnel policies of the county must accurately incorporate state and federal law. Counties need to implement personnel policies and procedures that comply, while setting clear standards for employees to follow. For an excellent discussion of state and federal statutory law see Kansas Employment Law Handbook, published by the [Kansas Bar Association](#).

[Back to top](#)

## CHAPTER 21 ENDNOTES

- 
- <sup>1</sup> *Owens v. Rush*, 654 F.2d 1370, 1375-76 (1981); see Chapter 20.
- <sup>2</sup> A.G. 93-64.
- <sup>3</sup> K.S.A. §§ 19-302, 19-503, 19-805, 19-1202.
- <sup>4</sup> A.G. 94-115.
- <sup>5</sup> A.G. 99-29.
- <sup>6</sup> K.S.A. § 75-4321; *City of Coffeyville v. IBEW Local No. 1523*, 270 Kan. 322, 14 P. 3d 1 (2000).
- <sup>7</sup> K.S.A. § 75-4308.
- <sup>8</sup> K.S.A. § 75-4311.
- <sup>9</sup> K.S.A. § 75-4401 *et seq.*
- <sup>10</sup> See A.G. 88-11.
- <sup>11</sup> *Cleveland Board of Education v. Loudermill*, 15 S.Ct. 1487 (1985).
- <sup>12</sup> K.S.A. § 73-201.
- <sup>13</sup> K.S.A. § 73-201(d).
- <sup>14</sup> See K.S.A. § 73-201(a)(2).
- <sup>15</sup> See K.S.A. § 73-201(e) for detailed requirements of the written statement.
- <sup>16</sup> K.S.A. § 73-201(f).
- <sup>17</sup> K.S.A. § 73-201(e).
- <sup>18</sup> K.S.A. § 73-201(g).
- <sup>19</sup> K.S.A. § 73-201(d).
- <sup>20</sup> K.S.A. § 44-1201 *et seq.*
- <sup>21</sup> A.G. 91-65.
- <sup>22</sup> K.S.A. §§ 44-1201 through 44-1213.
- <sup>23</sup> See K.S.A. § 44-1204.
- <sup>24</sup> *Dollison v. Osborne Co.*, 243 Kan. 763, 763 P.2d 1101 (1998).
- <sup>25</sup> K.S.A. § 35-107.
- <sup>26</sup> K.S.A. § 79-3294 *et seq.*
- <sup>27</sup> K.S.A. § 40-2301.
- <sup>28</sup> K.S.A. § 44-508.
- <sup>29</sup> K.S.A. § 44-505b.
- <sup>30</sup> K.S.A. § 44-701 *et seq.*
- <sup>31</sup> K.S.A. § 44-704.
- <sup>32</sup> K.S.A. § 74-4951 *et seq.*
- <sup>33</sup> K.S.A. § 74-49b14.
- <sup>34</sup> [www.nrsforu.com/rsc-web-preauth/disclosure/naco-information](http://www.nrsforu.com/rsc-web-preauth/disclosure/naco-information) (Last accessed April 6, 2023).
- <sup>35</sup> 29 U.S.C. § 206(a).
- <sup>36</sup> 29 U.S.C. § 213(a); 29 C.F.R. § 541; 29 C.F.R. § 553.104.
- <sup>37</sup> 29 U.S.C. § 206(d).
- <sup>38</sup> *Stone v. City of Kiowa*, 263 Kan. 502, 513, 950 P.2d 1305 (1997).
- <sup>39</sup> *Lamon v. City of Shawnee*, 972 F. 2d 1145, 1157 (10<sup>th</sup> Cir. 1992).
- <sup>40</sup> *Id.* at 1155-56.
- <sup>41</sup> 42 USCS § 2000e *et seq.*
- <sup>42</sup> 29 USCS § 623.
- <sup>43</sup> 427 U.S. 347 (1976).
- <sup>44</sup> 445 U.S. 507 (1980).
- <sup>45</sup> See *Rankin v. McPherson*, 483 U.S. 378 (1987).
- <sup>46</sup> 42 USCS § 1983.
- <sup>47</sup> Until June 6, 1978, courts did not consider municipalities within the scope of Section 1983 because it was not a “person” within the meaning of that statute. But in *Monell v. Department of Social Services of the City of New York*, 436 U.S. 658 (1978), the U.S. Supreme Court held that government entities qualify as a “person.”
- <sup>48</sup> *Stewart v. Shawnee County Commissioners*, 320 F. Supp. 2d 1143, 1150-1151 (D. Kan. 2004).

---

<sup>49</sup> K.S.A. § 44-1001 *et seq.*

<sup>50</sup> 42 U.S.C. § 12101 *et seq.*

<sup>51</sup> 29 U.S.C. §§ 621-643.

<sup>52</sup> 29 U.S.C. § 631(a).

<sup>53</sup> K.S.A. § 44-1111 *et seq.*

<sup>54</sup> K.S.A. § 44-1112.

<sup>55</sup> K.S.A. § 44-1110.

<sup>56</sup> 8 U.S.C. § 1324-1324b.

<sup>57</sup> 29 U.S.C. § 2601 *et seq.*

## CHAPTER 22: DUAL OFFICEHOLDING: INCOMPATIBILITY OF OFFICE

By James M. Kaup

Mr. Kaup is in private practice and has been an instructor and lecturer at Wichita State University and the University of Kansas. This article is a reprint from the Kansas Government Journal, February 1989, updated to include more recent opinions of the Attorney General.

### ARTICLE 1: UNDIVIDED LOYALTY

#### 22.1.1 Introduction

Questions arise frequently as to whether it is lawful for one person to:

- (1) Simultaneously hold two offices.
- (2) Simultaneously hold an elected office and an appointive office.
- (3) Run for elective office while holding another elected or appointed position.
- (4) Hold an elective or appointive office and also be a salaried government employee.
- (5) Hold one county office and another with the school, city, township, state or a special unit of government.

The following materials cover:

- (1) The basis for a legal rule against holding incompatible public offices.
- (2) How to distinguish between dual offices holding involving compatible offices versus incompatible offices.
- (3) The penalty for holding incompatible offices.

Anyone now holding elective or appointive public office should keep incompatibility of office in mind whenever offered an appointive office or running for elective office. Governing bodies considering appointing to public office someone who already holds another public office should also keep incompatibility in mind.

[Back to top](#)

#### 22.1.2 The General Rule

Whether the holder of a particular public office may simultaneously hold some other specified public office is a frequently asked question. When determining whether a dual office holding is lawful, the first rule is to remember that a dual office holding is not *per se* a violation of law. It is only when the offices that are being held are incompatible with each other that there are legal consequences. **The general rule in Kansas is one person may hold dual offices unless the**

**offices are determined to be incompatible.**<sup>1</sup> This rule, having been embedded in the common law since early times, recognizes the need of undivided loyalty of a public officer in the discharge of his or her duties.

Who and what determines whether incompatibility exists? In a few cases, the holding of specific combinations of offices is expressly prohibited by either the Kansas Constitution or by state statute, *e.g.*, Kansas Constitution, Art. 3, Sec. 13, bans judges from holding other offices; K.S.A. § 14-1302 forbids city commissioners in second class cities from holding other public offices. County commissioners may not hold other public offices, except for certain boards, commissions, etc. created by statute. *See* K.S.A. § 19-205. Even when a particular combination of offices has not been prohibited by the Kansas Constitution or by statute, the courts may nonetheless hold that simultaneous holding of office X and office Y creates an unlawful “incompatibility of office.”

[Back to top](#)

### **22.1.3 When Are Public Offices Incompatible?**

In speaking to the issue of incompatibility of public offices, the Kansas Supreme Court said: “It is difficult to give a definition which will have universal application. The distinction is best determined by an examination of the cases which have been held to fall on one side or the other of the line of cleavage.”<sup>2</sup>

Precedent, therefore, is very important. It should be noted, however, that relatively few of the many possible combinations of public offices have been tested for incompatibility by the Kansas appellate courts or the Kansas Attorney General.

[Back to top](#)

### **22.1.4 Inconsistency Between Offices**

Although the courts have not come up with a single comprehensive rule to be used in determining incompatibility, the general test appears to be whether there is an inconsistency in the functions of the two offices. As noted by the Kansas Supreme Court in *Dyche v. Davis*:

Offices are incompatible when the performance of the duties of one in some way interferes with the performance of the duties of the other. This is something more than a physical impossibility to discharge the duties of both offices at the same time. It is an inconsistency in the functions of the two offices.

**Example:** Simultaneously holding the same offices of city manager and city treasurer results in such an inconsistency of functions. The city manager has the power to appoint and remove all heads of departments, and all subordinate city employees.<sup>3</sup> Included in this grant of authority is the responsibility for the discipline of all appointive offices. The city manager is thus the supervisor and the party responsible for discipline over the city treasurer. It would be difficult if not impossible to effectively discipline an office which one holds.<sup>4</sup>



Normally, the duties and functions of public offices are set out by statute or the local law which establishes the office. Whether or not there is incompatibility between the duties and functions of any two offices can often be determined from these basic descriptions. **If the duties and responsibilities of the two offices are not incompatible, holding them simultaneously will not be unlawful.**

[Back to top](#)

#### **22.1.5 Subordination of Offices**

Incompatibility can also arise where one person is simultaneously holding positions as an officer and an employee. It is not in the public's best interest for a person to serve as a governing body member and also be employed by the same unit of government as an employee. The public's interest is not well served by such an arrangement because of the influence the governing body member could exert over matters such as salary, promotion, discipline, and termination, all of which directly affect the individual's position as an employee.

The tests for whether one office is subordinate to another include determining whether:

- (1) One office has supervision over the other; or
- (2) One office has fiscal control over the other; or
- (3) The incumbent of one office may vote for the appointment or removal of the holder of the other office; or
- (4) One office is subordinate to the other in some of its important and principal duties.

[Back to top](#)

#### **22.1.6 Offices Which Serve as Checks Upon Other Offices**

Incompatibility can arise when one office operates as a check upon the other. In the example of the offices of the city clerk and the city treasurer, both keep financial records that are in many ways identical. This system is designed to protect public funds. That objective would be defeated if both offices were simultaneously held by the same person.

Courts have held that incompatibility of offices does not arise when the duties of the offices are the same or where one office helps in the performance of the duties of the other. The Kansas Supreme Court held that the office of fish and game warden and professor of zoology were not incompatible in *Dyche v. Davis*. The Court said that the two offices were not inconsistent, and that performing the duties of one office would increase efficiency in performing the duties of the other.

[Back to top](#)

#### **22.1.7 Acceptance of Incompatible Office**

The fact that offices are incompatible does not mean that a public official cannot take the second office. A person who accepts a second office incompatible with the first is said to vacate the first office. **The mere acceptance of the second incompatible office terminates holding the first office as effectively as would a resignation.** This rule arises from the assumption that a

choice was made between the two offices when the second office was accepted. No judicial determination or formal resignation is necessary – the first-held position is lost. But it should be noted that in incompatibility cases involving an individual holding a position of public employment and subsequently accepting an incompatible public office, courts have sometimes exercised a more equitable approach. In *501 v. Baker* a tenured schoolteacher became a member of the school board of the same school district in which she taught. The Kansas Supreme Court determined the position of teacher, and the public office of board member were incompatible. But the court stated it would be inequitable to require the teacher to resign from her paid, tenured position as teacher. The court instead held the teacher was disqualified from serving on the board.<sup>5</sup> The Kansas Attorney General has also recently opined that when the first-held of the incompatible offices is a position of employment other than a public office, Kansas courts would give the individual the choice between resigning from the first position and resigning from the second.<sup>6</sup>

It is important to remember that incompatibility cannot exist until the second office is taken. For that reason, holding one office while running for another incompatible office does not create an unlawful incompatibility of office under Kansas law. It is not until the officer wins his or her election or achieves an appointment to the elective or appointive office, and is actually sworn to office, that the incompatibility exists.

This common law (i.e., court-made) rule of automatic removal from the first-held office has been codified in several Kansas statutes.

Kansas has a statute that deals with simultaneous election to more than one office.

When a person is simultaneously elected to more than one office, such person may accept any such offices that are not incompatible with any other office accepted by such person. If a person accepts election to incompatible offices, the person shall be deemed to have accepted the office last accepted and to have declined any previously accepted incompatible office.<sup>7</sup>

If incompatibility exists, the consequences of the rule (i.e., automatic resignation) cannot be avoided by the officer's efforts to "abstain" from performance of the incompatible role in those situations when a conflict arises. Abstention from action in such a fashion would deprive the public of the proper performance of its officials and cannot be employed to defeat the common rule law.

[Back to top](#)

#### **22.1.8 Public Policy Considerations for Prohibiting Incompatible Dual Office Holding**

Incompatibility is not defined by the physical or mental ability of a given individual to perform the duties of both offices. The courts have said that such factors as an individual's integrity, talent, or ability to act impartially are not relevant to the question of whether incompatibility exists. Rather, the rationale of the law is based upon the belief that the public's interest is

harmful when one person simultaneously exercises the powers, and discharges the duties, of incompatible offices.

**The overriding factor in an incompatibility of office question is whether the official can faithfully, impartially, and efficiently discharge the duties of both offices.** When one office operates as a check or control, or in a supervisory capacity over the other office, the public would be left with only a part-time official if that individual were required to abstain from discussion or participation in matter affecting the other office. The public is entitled to more than a part-time official and certainly is entitled to an official who has “undivided loyalties.”<sup>8</sup>

When an office has been designed to act as a deterrent to corruption within another office, that deterrence is lost by the same person holding the position that the other position was designed to watch over. In maintaining the public’s confidence in the legitimacy of government, the doctrine of the separation of powers must be preserved. Therefore, the rule of incompatibility reflects upon the nature of the offices and their relationship to each other. It is not a rule that reflects upon the ability of a particular individual to properly and conscientiously discharge the duties of both offices.

[Back to top](#)

#### **22.1.9 Public Office vs. Public Employment**

The rule against one person holding incompatible offices generally extends only to public offices, as distinguished from positions in the public service which are considered as mere agency or employment. The courts have recognized that public office holding, and public employment are not the same. As noted by the Kansas Supreme Court in *Sowers v. Wells*, 150 Kan. 630, 95 P.2d 281 (1939), everyone who holds public office is in the employment of the public, but not all who are in public employment are public officials.

Generally, a public office signifies a position of trust. It is an entity that exists even without someone holding the office. A public officer is usually required to take an oath and a salary is usually provided by state or local law, but these are not indispensable to public office. A public office has been defined to mean a position which has been created by law involving tenure, continuity, and the imposition of duties on the incumbent which involves some exercise of the sovereign power, large or small, in the making, executing, interpreting, and administering of the law.

The Kansas Supreme Court has said that: “...the right to exercise some definite portion of the sovereign power constitutes an indispensable attribute of the public office.”<sup>9</sup>

Even though a law may refer to a position as that of an officer, if the position is in fact supervised and carries with it no officially vested corporate power, merely calling the individual an officer does not make such an office.<sup>10</sup>

A leading case showing the distinction between an officer and an employee says:

...five elements are indispensable in any position of public employment, in order to make it a public office:

- (1) It must be created by the Constitution or by the legislature or created by a municipality or both...;
- (2) It must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public;
- (3) The powers conferred and the duties to be discharged, must be defined directly or implied...;
- (4) It must have some permanency and continuity, and not be only temporary or occasional.<sup>11</sup>

One distinction that can be drawn between an officer's status and an employee's status is that an officer has responsibility for results while the duties of an employee are in obedience to the legal authority of another.<sup>12</sup> Another distinction is that a public office does not establish a contractual relationship whereas employment can. A government employer entering into a contract for employment services generally cannot vary the terms of the contract by refusing to pay for the service or by imposing increased duties without the consent or acquiescence of the other party to the contract. By contrast, a public officer has no vested rights in the office.<sup>13</sup> The office may be abolished, the duties increased or decreased or transferred, and the officer may be deprived of future salary.

Positions held to be public offices include police officer,<sup>14</sup> coroner,<sup>15</sup> county engineer,<sup>16</sup> deputy sheriff,<sup>17</sup> city attorney,<sup>18</sup> municipal judge,<sup>19</sup> member of citizen participation organization created by ordinance,<sup>20</sup> and part-time prosecuting attorney.<sup>21</sup>

Positions held not to be public offices include field man working under a city health commissioner,<sup>22</sup> dairy inspector,<sup>23</sup> professor at a state university,<sup>24</sup> zoning administrator,<sup>25</sup> and executive director of an urban renewal agency.<sup>26</sup>

As stated above, the general rule is that the doctrine of incompatibility of offices is limited to the holding of more than one office. However, the doctrine is applicable to cases where one person is simultaneously a public officer and a public employee where the compensation for the employee is fixed by public authority and is made payable by public funds.<sup>27</sup> The Kansas Attorney General has opined that when a council member is compensated by the city to perform street maintenance or other work for the city, there is an inconsistency in the functions of the two positions which would require the council member to vacate the office of council member.<sup>28</sup>

**Example 1:** Incompatibility arises because the council member is in a position to supervise his or her own work, as well as voting on compensation to pay for that work. Such arrangements may also create a conflict of interest subject to K.S.A. § 75-4304 which prescribes self-dealing contracts by public officers and employees. If the officer is

not compensated for his or her services, the Attorney General has concluded that the doctrine of incompatibility does not apply.

**Example 2:** The Attorney General has held that the doctrine of incompatibility of offices does not preclude a mayor of a third-class city from performing the duties of a dog catcher, when the duty was vested in the mayor by ordinance and did not result in any additional compensation being paid.<sup>29</sup>

[Back to top](#)

#### **22.1.10 Constitutional and Statutory Prohibitions and Approvals**

As noted above, specific incompatible offices can be designated by constitutional or statutory provisions. If dual office holding is declared unlawful by the legislature or the constitution, it need not meet the court-made standard of incompatibility. If the law expressly forbids certain dual office holding, it is absolutely forbidden, regardless of whether the courts would view those particular offices as incompatible. Statutes also exist which expressly authorize holding more than one office.

**Example:** Persons who serve as law enforcement officers for another municipality or public agency may be appointed as law enforcement officers in cities of the first, second, and third class.<sup>30</sup> Incompatibility does not arise because the functions and duties of the offices are the same and because the state legislature has expressly “approved” of such dual office holding.

Dual office holding should not be confused with the concept of conflicts of interests. The purpose of the Kansas conflict of interest law<sup>31</sup> is to require a disclosure of those private interests of a public official which may conflict with his or her discharge of official duties. Adoption of a conflict-of-interest law does not abrogate the common law rule against the holding of incompatible offices.

[Back to top](#)

#### **22.1.11 Kansas Constitutional Provisions Prohibiting Dual Office Holding**

Justices of the Kansas Supreme Court and judges of the district court shall not hold “any other office of profit or trust under the authority of the state, or the United States, except as may be provided by laws or practice law during their continuance in office.”<sup>32</sup>

Members of Congress or civil officers or employees of the United States are not eligible to a seat in the state legislature, and if a state legislator is elected to Congress or appointed to any office under the United States his acceptance vacates his or her seat.<sup>33</sup>

[Back to top](#)

### 22.1.12 Kansas Statutes Prohibiting Dual Office Holding

Position	Prohibited Dual Office
<u>City Governing Body</u>	Commissioners and mayors in cities of the first and second class shall not hold any office of profit or trust under state or federal law or hold any county or city office. <sup>34</sup>
<u>Library Board</u>	No person holding office in a municipality shall be appointed a member of the library board. <sup>35</sup>
<u>Cemetery Board</u>	No person holding “any official position under the city” shall be appointed a director of the cemetery board. <sup>36</sup>
<u>Urban Renewal</u>	Commissioners or officers of any urban renewal agency, board or commission exercising urban renewal powers shall not hold “any other public office under the municipality.” <sup>37</sup>
<u>County Clerk</u>	The county or deputy county clerk shall in no case act as a county treasurer or as the treasurer’s deputy. <sup>38</sup>
<u>County Commissioners</u>	No person holding any state, county, township, or city office shall be eligible to the office of county commissioner. Appointments may be made to state boards, etc., established pursuant to statute. But any county commissioner may serve as a volunteer for an emergency medical or ambulance service or serve as a volunteer fire fighter and receive the usual compensation. <sup>39</sup>
<u>County Attorney</u>	A county attorney cannot hold any judicial or other county office. <sup>40</sup>
<u>County Treasurer</u>	No sheriff, probate judge, county attorney, county clerk, clerk of the district court, or the deputy of any of them, nor any member of the Board can hold the office of the county treasurer. <sup>41</sup>
<u>Metropolitan Transit Authority</u>	Members of the board or employees of the authority cannot hold any other office or employment under the federal, state, or any county or municipal government except an honorary office without compensation. <sup>42</sup> The secretary of the transit authority “shall not be engaged in any other business or employment during his or her tenure.” <sup>43</sup>
<u>State Classified Service</u>	Any officer or employee in the state classified service shall resign from the service prior to taking the oath of office for a state elective office. <sup>44</sup>
<u>Highway Patrol</u>	No member of the patrol shall hold any other elective or appointive commission or office, except in the Kansas national guard or in the organized reserve of the United States army, air force, or navy; in the governing body of a municipality if the position is appointed or elected on a nonpartisan basis; or on any appointed board, commission, or task force which the superintendent of the highway patrol deems necessary as part of such member’s or officer’s duties. <sup>45</sup>

[Back to top](#)

### 22.1.13 Summary

Anyone who holds an elected or appointed public office should keep incompatibility of office in mind whenever offered appointive office, or when running for an elective office. Governing bodies, when considering the appointment of someone currently holding a public office, must also consider whether the dual office holding will result in incompatibility. Also, officers should bear in mind that the two offices in question need not belong to the same unit of government. As demonstrated on the listing below of incompatible offices, incompatibilities can occur where the two positions are city-county, city-school board, city-state, etc.

State and local laws dealing with “prohibited” combinations of offices are not the only authorities which should be consulted when trying to determine if an incompatibility of office exists. Most incompatibilities are found by the courts or addressed in Attorney General opinions. **Public officials should remember the legal consequences of accepting an office that is incompatible with one that is already held; resignation is automatic from the first office held.**

[Back to top](#)

### 22.1.14 Compatible Offices

The following combinations of offices have been declared compatible by decisions of the Kansas Supreme Court or by opinions issued by the Attorney General of Kansas.

- 1) City commissioner and attorney for drainage district.<sup>46</sup>
- 2) City treasurer and school board member.<sup>47</sup>
- 3) City engineer and county engineer.<sup>48</sup>
- 4) City clerk and clerk of the district court.<sup>49</sup>
- 5) Clerk of the district court and secretary to a county judge.<sup>50</sup>
- 6) Clerk or deputy clerk of a district court and clerk of municipal court.<sup>51</sup>
- 7) Clerk of the district court and part-time dispatcher for county sheriff.<sup>52</sup>
- 8) Council member and commissioner of city housing authority.<sup>53</sup>
- 9) Council members of a city of third class and administrator of municipal hospital operated under K.S.A. § 12-1615.<sup>54</sup>
- 10) Council member of a city of third class and township officer.<sup>55</sup>
- 11) Council member of a city of second class and volunteer fire fighter.<sup>56</sup>
- 12) Council member and chief attorney for state agency.<sup>57</sup>
- 13) County attorney and city attorney (third class city).<sup>58</sup>
- 14) County attorney and municipal judge, as long as not in the same county.<sup>59</sup>
- 15) County attorney and member of board of education.<sup>60</sup>
- 16) County commissioner and filter plant operator for city water department.<sup>61</sup>
- 17) County commissioner and property appraiser.<sup>62</sup>
- 18) County commissioner in county with consolidated law enforcement agency and retail liquor licensee.<sup>63</sup>
- 19) County commissioner and volunteer for an emergency medical service or ambulance service, or as a volunteer fire fighter.<sup>64</sup>

- 20) County election officer and local or state officer of a political party.<sup>65</sup>
- 21) County sheriff and city chief of police.<sup>66</sup>
- 22) Deputy sheriff and mayor.<sup>67</sup>
- 23) County treasurer and school board member.<sup>68</sup>
- 24) Elected official and county chair of a political party.<sup>69</sup>
- 25) Fish and game warden and zoology professor at state university.<sup>70</sup>
- 26) Food and drug inspector and hotel commissioner.<sup>71</sup>
- 27) Mayor and volunteer fire fighter.<sup>72</sup>
- 28) Mayor and dog catcher where that duty is vested in mayor by ordinance.<sup>73</sup>
- 29) Mayor (city of third class) and election commissioner.<sup>74</sup>
- 30) Mayor (city of second class) and state representative.<sup>75</sup>
- 31) Municipal judge and board of education member.<sup>76</sup>
- 32) Municipal judge (second- or third-class city) and member of the board of education.<sup>77</sup>
- 33) Sheriff or postmaster and supervisor of soil conservation district.<sup>78</sup>
- 34) State legislator and member of board of trustees of a community college.<sup>79</sup>
- 35) School bus driver or other school employee and member of board of education of same district.<sup>80</sup>
- 36) Township board member and township road overseer's assistant.<sup>81</sup>
- 37) Urban renewal board member and member of board of education.<sup>82</sup>
- 38) Worker's compensation administrative law judge and municipal court judge.<sup>83</sup>
- 39) City public works director and county commissioner.<sup>84</sup>
- 40) City commissioner resigned and accepted city attorney.<sup>85</sup>
- 41) Serving as a victim-witness coordinator employed by a county attorney's office and member of the board of education.<sup>86</sup>

[Back to top](#)

### **22.1.15 Incompatible Offices**

The following combinations of public office have been declared incompatible by the Kansas Supreme Court or by opinions issued by the Attorney General of Kansas:

- 1) Board of trustees of community college and city council member.<sup>87</sup>
- 2) Cemetery board of directors and city commissioner.<sup>88</sup>
- 3) City attorney and member of board of zoning appeals or member of library board.<sup>89</sup>
- 4) City clerk and city treasurer.<sup>90</sup>
- 5) City clerk and county commissioner.<sup>91</sup>
- 6) City commissioner (city of second class) and deputy sheriff.<sup>92</sup>
- 7) City commissioner (city of first class) and state representative.<sup>93</sup>
- 8) City commissioner (city of second class) and member of board of education.<sup>94</sup>
- 9) City commissioner and member of cemetery board of directors.<sup>95</sup>
- 10) City manager and city treasurer.<sup>96</sup>
- 11) City treasurer and member of KCK Board of Public Utilities.<sup>97</sup>
- 12) Council member and city law enforcement officer.<sup>98</sup>
- 13) Council member and municipal judge.<sup>99</sup>
- 14) Council member and health officer under K.S.A. § 68-205.<sup>100</sup>



- 15) Council member (city of second class) and city hospital trustee.<sup>101</sup>
- 16) Council member (city of second class) and reserve law enforcement officer.<sup>102</sup>
- 17) Council member (city of third class) and police commissioner.<sup>103</sup>
- 18) Council member and member of planning commission.<sup>104</sup>
- 19) Council member and director of port authority created under K.S.A. § 12-3401.<sup>105</sup>
- 20) Council member (city of second class) and member of advisory board for business improvement district formed under K.S.A. § 12-1781 *et seq.*<sup>106</sup>
- 21) County attorney and clerk of district court.<sup>107</sup>
- 22) County attorney and county zoning administrator.<sup>108</sup>
- 23) County attorney and city council member.<sup>109</sup>
- 24) County commissioner and county clerk.<sup>110</sup>
- 25) County commissioner and board of education member.<sup>111</sup>
- 26) County commissioner serving as part-time sewer inspector employed by the county.<sup>112</sup>
- 27) County commissioner and hospital trustee.<sup>113</sup>
- 28) County commissioner and member of district judicial nominating commission.<sup>114</sup>
- 29) County commissioner or mayor (city of third class) and school board member.<sup>115</sup>
- 30) County commissioner and city law enforcement officer or reserve deputy sheriff.<sup>116</sup>
- 31) County commissioner and volunteer emergency medical technician.<sup>117</sup>
- 32) County commissioner and facility coordinator for the county EMS system.<sup>118</sup>
- 33) Mayor or city council member or commissioner and fire chief.<sup>119</sup>
- 34) Mayor and council member.<sup>120</sup>
- 35) Mayor and city law enforcement officer.<sup>121</sup>
- 36) Mayor or city commissioner (city of second class) and deputy sheriff.<sup>122</sup>
- 37) Mayor (city of the third class operating under the mayor-council form of government) and member of county planning commission.<sup>123</sup>
- 38) Municipal judge and county attorney if in the same county.<sup>124</sup>
- 39) Municipal judge or fire chief (city of second class) and mayor or council member.<sup>125</sup>
- 40) Probate judge and city attorney.
- 41) State board of education and local board of education member.<sup>126</sup>
- 42) Board member of KAC and board member of Kansas Workers Risk Cooperative for Counties (KWORCC).<sup>127</sup>
- 43) Teacher employed by district and member of district's school board.<sup>128</sup>

[Back to top](#)

#### **22.1.16 Possibly Incompatible Offices**

The Attorney General has opined that the following offices may or may not be compatible, and that situations can possibly develop making the offices incompatible.

- 1) City attorney and attorney for a unified school district.<sup>129</sup>
- 2) County attorney and city attorney.<sup>130</sup>

[Back to top](#)

## CHAPTER 22 ENDNOTES

- 
- <sup>1</sup> *Abry v. Gray*, 58 Kan. 148, 48 P. 577 (1897).  
<sup>2</sup> *Dyche v. Davis*, 92 Kan. 971, 142 P. 264 (1914).  
<sup>3</sup> K.S.A. § 12-1040.  
<sup>4</sup> A.G. 82-174.  
<sup>5</sup> *USD 501 v. Baker*, 269 Kan. 239, 252, 6 P.3d 848 (2000).  
<sup>6</sup> A.G. 16-12.  
<sup>7</sup> K.S.A. § 25-123; *see also* A.G. 83-10; 85-19.  
<sup>8</sup> 3 McQuillin Municipal Corporations, Sec. 12.67.  
<sup>9</sup> *State v. Rose*, 74 Kan. 262, 86 P. 296 (1906).  
<sup>10</sup> *Jaggers v. Green*, 90 Kan. 153, 133 P. 174 (1913).  
<sup>11</sup> *State ex rel. Barney v. Hawkins*, 79 Mont. 506, 257 P. 411 (1927).  
<sup>12</sup> *Miller v. Ottawa Cty. Commissioners*, 146 Kan. 481, 71 P.2d 875 (1937).  
<sup>13</sup> *Lawson v. Zimmerman*, 47 Kan. 271, 27 P. 998 (1891).  
<sup>14</sup> *Haney v. Cofran*, 94 Kan. 332, 146 P. 1027 (1915).  
<sup>15</sup> *Rogers v. Slonaker*, 32 Kan. 191, 4 P. 138 (1884).  
<sup>16</sup> *Miller v. Ottawa Cty. Commissioners*, 146 Kan. 481, 71 P.2d 875 (1937).  
<sup>17</sup> *Smith v. Fenner*, 102 Kan. 830, 172 P. 514 (1918).  
<sup>18</sup> A.G. 75-187.  
<sup>19</sup> *Id.*; A.G. 78-141.  
<sup>20</sup> A.G. 77-350.  
<sup>21</sup> A.G. 78-141.  
<sup>22</sup> *Jagger v. Green*, 90 Kan. 153, 133 P. 174 (1913).  
<sup>23</sup> *Bassler v. Gordon*, 119 Kan. 40, 237 P. 907 (1925).  
<sup>24</sup> *Dyche v. Davis*, 92 Kan. 971, 142 P. 264 (1914).  
<sup>25</sup> A.G. 73-427.  
<sup>26</sup> A.G. Letter 1/21/73.  
<sup>27</sup> *Dyche*, 92 Kan. at 971.  
<sup>28</sup> A.G. 81-88, 79-251.  
<sup>29</sup> A.G. 82-49.  
<sup>30</sup> K.S.A. § 14-1502, 15-209.  
<sup>31</sup> K.S.A. § 75-4301a *et seq.*  
<sup>32</sup> Kan. Const., Article 3, Section 13.  
<sup>33</sup> Kan. Const., Article 2, Section 5.  
<sup>34</sup> K.S.A. § 14-1302.  
<sup>35</sup> K.S.A. § 12-1222.  
<sup>36</sup> K.S.A. § 12-1420, applicable to cities of the second and third class.  
<sup>37</sup> K.S.A. § 17-4758.  
<sup>38</sup> K.S.A. § 19-302.  
<sup>39</sup> K.S.A. § 19-205.  
<sup>40</sup> K.S.A. § 19-705.  
<sup>41</sup> K.S.A. § 19-505.  
<sup>42</sup> K.S.A. § 12-2815.  
<sup>43</sup> K.S.A. § 12-2820.  
<sup>44</sup> K.S.A. § 75-2953(b).  
<sup>45</sup> K.S.A. § 74-2113(d).  
<sup>46</sup> A.G. 75-157.  
<sup>47</sup> A.G. 89-21.  
<sup>48</sup> A.G. Letter 3/29/63.  
<sup>49</sup> *Abry v. Gray*, 58 Kan. 148, 48 P. 577 (1897).  
<sup>50</sup> A.G. 73-251.

- 
- <sup>51</sup> A.G. 77-357.
- <sup>52</sup> A.G. 75-103.
- <sup>53</sup> K.S.A. § 17-2337 *et seq.*
- <sup>54</sup> A.G. 77-143.
- <sup>55</sup> A.G. 77-143.
- <sup>56</sup> A.G. 89-76.
- <sup>57</sup> A.G. 88-9.
- <sup>58</sup> A.G. 79-25, 81-155.
- <sup>59</sup> A.G. 75-452.
- <sup>60</sup> A.G. 78-315.
- <sup>61</sup> A.G. 80-158.
- <sup>62</sup> A.G. 86-6.
- <sup>63</sup> A.G. 86-99.
- <sup>64</sup> K.S.A. § 19-205.
- <sup>65</sup> A.G. 93-63.
- <sup>66</sup> A.G. 75-36.
- <sup>67</sup> A.G. 85-8.
- <sup>68</sup> A.G. 91-11.
- <sup>69</sup> A.G. Letter 7/21/64.
- <sup>70</sup> *Dyche v. Davis*, 92 Kan. 206, 140 P. 637 (1914).
- <sup>71</sup> *Congdon v. Knapp*, 106 Kan. 206, 187 P. 660 (1920).
- <sup>72</sup> A.G. 81-74.
- <sup>73</sup> And no additional compensation is paid. A.G. 82-49.
- <sup>74</sup> A.G. 81-45.
- <sup>75</sup> A.G. 80-134.
- <sup>76</sup> A.G. 81-21.
- <sup>77</sup> A.G. Letter 10/25/72; A.G. 81-21.
- <sup>78</sup> A.G. Letter 4/22/64.
- <sup>79</sup> A.G. 73-110.
- <sup>80</sup> A.G. 79-108, 91-15; *but see USD No. 501, Shawnee Cty., Kan. v. Baker*, 269 Kan. 239, 6 P.3d 848 (2000).
- <sup>81</sup> A.G. 79-242.
- <sup>82</sup> A.G. 75-48.
- <sup>83</sup> A.G. 95-51.
- <sup>84</sup> A.G. 99-11.
- <sup>85</sup> A.G. 01-21; and K.S.A. § 14-1302.
- <sup>86</sup> A.G. 17-8.
- <sup>87</sup> A.G. 83-9.
- <sup>88</sup> A.G. 61-48.
- <sup>89</sup> A.G. Letter 3/7/60.
- <sup>90</sup> A.G. 75-446.
- <sup>91</sup> *State v. Plymell*, 46 Kan. 294, 26 P. 479 (1891); A.G. 81-136.
- <sup>92</sup> A.G. 91-98.
- <sup>93</sup> A.G. 91-86.
- <sup>94</sup> A.G. 79-248.
- <sup>95</sup> A.G. Letter 2/24/61.
- <sup>96</sup> A.G. 82-174.
- <sup>97</sup> A.G. 92-139.
- <sup>98</sup> A.G. 73-422.
- <sup>99</sup> A.G. 81-107, 81-74.
- <sup>100</sup> A.G. Letter 11/21/72.
- <sup>101</sup> A.G. 93-29.
- <sup>102</sup> A.G. 89-76.
- <sup>103</sup> A.G. 81-178.

- 
- <sup>104</sup> A.G. 77-212, 2001-24; *but see* K.S.A. § 12-744, amended in 1991.
- <sup>105</sup> A.G. 81-214.
- <sup>106</sup> A.G. 89-77.
- <sup>107</sup> *Moore v. Wesley*, 125 Kan. 22, 262 P. 1035 (1928).
- <sup>108</sup> A.G. 91-154.
- <sup>109</sup> A.G. 74-214.
- <sup>110</sup> A.G. 81-284.
- <sup>111</sup> A.G. 79-255, 81-176.
- <sup>112</sup> A.G. 82-111.
- <sup>113</sup> A.G. 83-11, 12-15.
- <sup>114</sup> A.G. 94-165.
- <sup>115</sup> A.G. 81-176, 82-8.
- <sup>116</sup> A.G. 82-8.
- <sup>117</sup> A.G. 2016-12; *but see* K.S.A. § 19-205.
- <sup>118</sup> *Id.*
- <sup>119</sup> A.G. 81-249, 82-106.
- <sup>120</sup> *Gilbert v. Craddock*, 67 Kan. 346, 72 P. 869 (1903).
- <sup>121</sup> *Id.*
- <sup>122</sup> A.G. 73-233.
- <sup>123</sup> A.G. 2014-03.
- <sup>124</sup> A.G. 75-452.
- <sup>125</sup> A.G. Letter 5/13/91; A.G. 81-74.
- <sup>126</sup> A.G. 94-113; *see also* *USD 501 v. Baker*, 269 Kan. 239, 6 P.3d 848 (2000).
- <sup>127</sup> A.G. 95-61.
- <sup>128</sup> *Unified School Dist. No. 501, Shawnee Cty., Kan. v. Baker*, 269 Kan. 239, 6 P.3d 848 (2000).
- <sup>129</sup> A.G. 82-38.
- <sup>130</sup> A.G. 79-25, 81-155.